(1)

No.

Supreme Court, U.S.
FILED

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IN THE

Supreme Court of the United States

RICHARD WHITE AND JANET WHITE ----Petitioners

v.

SECURITY PACIFIC FINANCIAL INC.----Respondent
(ONLY PARTY)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE CALIFORNIA STATE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

RICHARD WHITE AND JANET WHITE
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143pp

QUESTIONS PRESENTED

A In part, the purposes of challenge and recusal, are to prevent injustice and judicial corruption.
Did the mis-application of California civil code of procedure170.6, prevent the defendants from having a fair trial?

B. Overt acts of Judges are grounds for a new trial.
Were the Defendants denied a fair trial because of irregularities on behalf of Judges and Plaintiffs counsel?

C State and Federal Law does not eliminate "intrinsic" or "extrinsic" fraud, as a cause to deny a motion for Summary Judgment.
Did the misapplication of CCP1856(a) deny the Defendants a fair trial?

D Should CCP170.6 be interpreted to include appellate and supreme court justices?

E. The inherent power of the U. S. Supreme court is to prevent injustice and corruption in lower Courts.
Should the U.S. Supreme Court refer this case to the U.S. Justice Department for further investigation?

TABLE OF CONTENTS

Question A..... i
Question B..... i
Question C..... i
Question D..... i
Question E..... i
Table of Contents.....ii
Index of Appendices.....iii
Table of Authorities..... iv
I Opinions Below..... 1
II Statement of Jurisdiction..... 1
III Constitutional and Statutory Provisions Involved..... 1
IV Statement of the Case..... 1
1. Pre-trial Bias..... 3
2. Bias in DO20483..... 5
3. Bias in DO29409..... 6
V Summary of Argument..... 12
VI Question A: 15
1 CCPP1856 is in conflict with State and Federal Law..... 15
2 The Courts legal and factual error..... 18
3 Judgment should be reversed..... 20
VII Question B:..... 20
1. Judicial Misconduct..... 20
2. Challenge and Recusal prevents injustice.... 20
3. Overt acts of Judges and legal error are grounds for new trial..... 21
4 Courts Denial of Rehearing was Abuse of Discretion..... 21
VIII Question C: 22
1. No one is above the law..... 22
2. CCP1856(a) should be interpreted to include Intrinsic" and "Extrinsic" fraud..... 22
3 CCP1856(a) is invalid..... 22
IX Question D 22
X Question E 22
XI Damages: 23

1. California State Law entitles Defendants to damages..... 23
XII Conclusion..... 23
Reasons for Granting the Petition..... ////

INDEX OF APPENDICES

California Supreme Court
Denial of Review.....A

Appellate Court (DO29409)
Denial of Rehearing.....B
Opinion.....C
Trial Court
Judgment.....D
Ruling.....E
Plaintiff and Defendant Pleadings.....F
White Declaration.....F1
Plaintiffs' Complaint.....F15
Defendants' Answer.....F18
Plaintiffs' Motion for Summary Judgment.....F20
Plaintiffs' Points and Authorities.....F22
Declaration of TORLONE.....F28
Defendants Separate Disputed Facts F31
Plaintiffs Separate Undisputed Facts.....F36
Defendants Points and Authorities.....F41
Plaintiffs Evidentiary Objections.....F43
Plaintiffs Reply to Defendants Opposition.....F45
Defendants Amended Points & Authorities.....F49
Declaration of Huffman.....F58
White Letter To Huffman, Nares, Haller.....G74
Constitutional and Statutory Provisions Involved Appendix ..H

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

(I) OPINIONS BELOW

1. The date on which the California Supreme Court denied Review of DO29409; was on 7/21/99; and appears at Appendix A.
2. The Appellate Denial for Rehearing on 5/10/99; appears at Appendix B.
3 The Opinion of the 4th District Court of Appeals on 4/19/99; appears at Appendix C.
4 The Judgment of the California Superior Court on 9/26/97; appears at Appendix D.
5 The Tentative Ruling of California Superior Court on 5/16/97; appears at Appendix E.
6 The Opinion of the 4th District Court of Appeals on Case DO2048; was on 1/29/97; and appears at Appendix F.

(II) JURISDICTION

1. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a); and Supreme Court Rule 10(a) & (b).

(III) CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (APPENDIX H)

	Page No.
CC1567	A1
CC1571	A1
CC1572	A1
CC1574	A1
CC1622	A1
CC1623	1
CC1640	1

CC1649..... 1
CC1709..... 1
CCP1856(a)&(g)..... 1
CC1916..... 2
CCP170.6..... 2
CCP437c..... 2
CCP473..... 2
CCP482.040..... 2
CCP580a..... 2
CCP592..... 4
CCP663(1)..... 4
CCP907..... 4
CCP908..... 5
Calif. Court of Appeals Rule 23..... 5
Calif. Court of Appeals Rule 29..... 6
CCP170.6..... 6
PC6068a,b,c,d,g,o & (7)..... 7
Federal Pleading Rule 48.5..... 7
Pleading 48.5..... 8
Rule 83.5..... 8
FRCP59(a)..... 8
FRCP60(b)..... 8
FRE804a(4)..... 21
Federal Local Rule 83.5f(5)..... 8
Rodriguez v. Muncipal Ct. Of Visilia..... 9
Lentfoehr v. Lentfoehr..... 9
George v. Beaty..... 9
Irer v. Gawn..... 9
Baker v. Baker..... 9
Duke Power Co. V. Carolina Environmental Co..... 9
Guzman v. Ruiz..... 10
Bose Corp. V. Consumers Union..... 10
Berri v. Rogers..... 10
Fre v. Bland..... 11
Fiske v. Bauder..... 11
State Farm v. White (DO20483)..... 12
Imbler v. Pachtman..... 20
Supreme Court Rule 10(a) & (b)..... 20
FREP804..... 21
in writ of certiorari page no.

FPI Development, Inc. v Nakashima 9
Bose Corp. v. Consumer Union of the U.S., Inc. 17
Dayton Board of Education v. Brinkman 17
Fre v. Bland 17
Coffelt v. Coffelt..... 19
U.S. v. Throckmorton..... 19
Schrader Iron Works, Iron Works v. Lee..... 19
Gay v. Torrance..... 19

I. STATEMENT OF THE CASE

1. Pre Trial Bias.

Over a period of several years prior to this action, Defendant, Richard White had been extremely critical of Appellate Justice Richard HUFFMAN; when he was the Chief Prosecutor for the D/A in San Diego county, California. That criticism also involved and Presiding Justice Daniel KREMER, previously a Prosecutor for the California State Attorney General. (App F1).

The thrust of the criticism set forth in the Declaration of WHITE; alleges that the District Attorney of San Diego County and State Attorney General were giving "protection" to campaign contributors; prominent organized crime figures; prostitutes; drug dealers; Animal Regulations Officers'; Sheriffs vice officers; and police in various types of criminal activity.

In retaliation, KREMER & HUFFMAN led 2 prosecution teams to have Defendant, Richard White falsely arrested for the "illegal possession of wolves"; and then unsuccessfully attempted to have him found "insane". At the time, Defendant had a U.S. Federal Zoo permit; a permit from the California Department of Fish and Game; and had also boarded wolves, for the California Department of Fish and Game.

There were at least 7 government prosecutors involved in the Defendants prosecution. KREMER led the Attorney General team; which consisted of Jeffrey JOSEPH and Gary SCHONS.

SCHONS has since been promoted to the lead attorney on the California Commission for Judicial Performance. HUFFMAN was in charge of Deputy District Attorney HOWATT (currently a Presiding Superior Court Judge); Deputy

District Attorney's MAINO & REVAK; also participated; and are Superior Court Judges at this time.

The Defendants allegations had triggered 3 libel and slander lawsuits against him by 2 Deputy Sheriffs; a Sheriffs vice cop; about half a dozen Animal Regulation Officers, and the County Veterinarian.

The purpose of the bogus "wolf charges", and the "insanity" attempt; was to prevent the Defendant from testifying on his own behalf in the 3 lawsuits. During that time, HUFFMAN filed a motion to "protect" the Plaintiffs in these 3 lawsuits. (App. F58).

One of those lawsuits against the Defendant involved allegations that Superior Court Judges, Raul ROSADO and Earl GILLIAM; had improper relationships with prostitute/drug dealer Betty Jean Tucker DRAYNER.

The Defendant had accumulated several thousand pages of document any evidence to support his claims of corruption by the Sheriff, District Attorney, HUFFMAN and the Attorney Generals' Office.. (WHITE's Declaration paragraphs 12, 13, and 14)

Several days before trial was to commence in DO20483 on 11/8/93; Defendant learned that State Farms attorney's had gotten together and coached all of their witnesses to commit perjury, regarding the extent of damages to Ms. CAREY'S home.

Defendants subsequent motion to file a cross/complaint and delay trial was denied.

Defendant had not been notified ROSADO was to be trial Judge until aboout 4 days prior to 11/8/93; which made it impossible for Defendant to file a written objection to him, pursuant to CCP170.3. In response, the Appellate Court claimed that they could not act on a claim of bias because: **"White did not file any written objection (14 days prior) to Judge Rosado's participation in the case, as required by CCP170.3."**

The pleadings in DO20483 had elaborated in great detail about the corruption between ROSADO, GILLIAM, HOWATT, KREMER & HUFFMAN; and were reviewed by Appellate Justices NARES, MC DONALD & BENKE. (Also see WHITE letter to HUFFMAN, NARES & HALLER.)

Paragraph 88 of WHITE'S Declaration is incorrect. It should read: "HUFFMAN did not testify against the Defendants".

Under California Law, the rest of the other allegations in Defendants Declaration are now legally true.

(See: RODRIGUEZ v. Municipal Court of Visalia; Lentfoer v. Lentfoer; and George v. Beaty.).

As prosecutors, HUFFMAN & KREMER, et. al.; were subject to criminal prosecution. (See IMBLER v. Pachtman).

2. BIAS IN <u>DO-20483</u>

On 1/29/97, in DO20483; the Appellate Court affirmed the Judgment of ROSADO in State Farm v. White.

In San Diego County, presiding Judges of Superior Court are responsible for case assignments. HOWATT was Presiding Judge in Superior Court. When ROSADO was brought out of retirement to hear State Farm v. White. Defendant challenged ROSADO, but he refused.

In DO20483, ROSADO had refused to allow questioning of about 50 falsified insurance claims; refused to allow a tape recording into evidence which proved the falsity of the Plaintiffs' claim; and limited the Defendant to approximately 18 minutes total time for his closing argument.

In DO20483, Sec. II, para. E, the Appellate Court contended that Judicial Bias was of little consequence in the outcome of Defendants trial, as follows:

A. Bias of Judiciary

White asserts that his case was intentionally sent to Judges Gamer and Rosado as a result of a conspiracy to retaliate against him for his efforts to uncover scandals involving the notorious collapse of the United States National Bank; the tax-evasion conviction of a prominent San Diego business-man and an unsuccessful attempt to have him committed to a psychiatric hospital. White also alludes to the recent corruption conviction of three former members of the superior court and Judge Gamer's marriage to one of the convicted judges.

White contends Judge Rosado had a relationship with the owner of a massage parlor and as a

consequence made a ruling favorable to a vice squad officer who was familiar with the relationship.

The 4th District Appellate Court denied Plaintiffs Appeal.

3. BIAS IN DO29409.

In 1990, Defendants gave the Plaintiff notes and Trust Deeds on 2 properties which were adjacent to each other. The present action arose after th Defendant defaulted on both properties; and both properties were sold at public auction.

On 3/19/90 the Defendants' had given a Note and Trust Deed for $72,000 to the Plaintiff, on the subject property of this lawsuit.

Plaintiffs loan was secured only by the property, and its rents and profits. **There was no provision for recourse against the Defendants.** The Plaintiffs "default" provision states:

> **After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale. Trustee shall apply the proceeds of sale to payment of: all sums expended under the items hereof, not then repaid with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto. Trustor shall pay all Beneficiary's attorney fees to perfect and realize on its security interest.**

On 10/28/93, the Defendants signed a "Modification Agreement"; which stated:

> **"SECURITY: I give you a security interest in the collateral checked 'yes' below (including proceeds of the collateral)";**
> **(Yes) Real Estate secured by a deed of trust located at the address shown: 8722 Wintergarden Blvd., Lakeside, Ca. 92040; and dated 3/19/90.**
> **(Yes) Other: ONE SONY TELEVISION SET".**
> **(The SONY T.V. was a cheap portable worth less than $100.)**
> On 12/30/94, the Plaintiff was given a 2nd Modification

Agreement; which was witnessed and counter signed by Plaintiffs Loan Closer, Dennis CARRILL. The loan securities remained unchanged. **There was no recourse provision, and the "Modification" stated as follows:**

> **SPECIAL MODIFICATION: The 'COMBINED NOTE & SECURITY AGREEMENT", dated Oct. 28, 1993, given by CUSTOMER to CREDITOR in connection with CUSTOMER'S Account, is modified in the following respects only: The maturity date is extended from Oct. 28, 1993 to Jan. 20, 2010, at which time all remaining principal and interest shall be due. The monthly payment amount shall be increased from $898.40 to $1043.40 beginning on Jan. 30, 1995 and remaining in effect until the maturity date. CUSTOMER acknowledges and agrees: (1) the unpaid balance outstanding on Customer's Account as of the date this Modification agreement is signed is $78,333.79; and (2) all Customers obligations under the NOTE, as modified by this Modification Agreement, continue to be fully secured by that Deed of Trust dated March 19, 1990, recorded March 21, 1990 as FILE NO.90-149513 in the Official Records of San Diego County, State of California, given by CUSTOMER to secure all Customer's obligations with regard to CUSTOMER'S ACCOUNT.**

On all 3 occasions that all of the above notes were signed; the Plaintiffs agents all made the fraudulent promise to the Defendants; that there would be absolutely no further recourse, if the notes were defaulted upon.

On 9/28/95, Defendants defaulted on their Note. The Plaintiff has never attempted to foreclose on the cheap portable T.V.; never attempted to collect about $900 per month for which the property was rented; or force a foreclosure sale, which occurred over a period of about 6 ½ months after default.

On 4/8/96, a senior lien holder held a foreclosure sale, and the property sold for $85,000. The Plaintiff did not attend the auction to protect its equity. The 1 ½ acre commercially

zoned property; with a 3 bedroom residence, basement and 2 ½ car garage, was valued at about $350,000, at the time of sale; and it was subsequently put up for sale by the new owners for $340,000.

On 11/13/96, the Plaintiff filed a Complaint for Deficiency Judgment , alleging that $78,204 was due, plus 15.55% interest plus $2454 in "reasonable" attorney fees; Plaintiff had claimed its note had supposedly become "valueless". Plaintiffs Complaint did not state the date of foreclosure sale, the value of the property at the time of sale, or its sale price; all of which is mandatory, pursuant to CCP580a; unless the Plaintiffs note had become "value-less"; (See Plaintiffs Complaint, App. F15).

The Defendants filed an answer to Plaintiffs Complaint in pro se. Defendants denied that $78,204 was due; or that $2454 was a "reasonable" attorney fee. The Defendants affirmative Defenses claimed: failure to state a Cause of Action; fraud; and that Plaintiff failed to defend its equity at auction. (See Defendants Answer; App. F18)

On about 5/25/97, Plaintiff filed a motion for Summary Judgment; with a supporting Declaration of facts made by one of Plaintiffs collection agents, Dave TORLONE. (Declaration of TORLONE, App. F28)

TORLONE swore under penalty of perjury that he could competently testify that the facts that "<u>are personally known by him to be true</u>".as follows: <u>Defendants made a Note to the Plaintiff on 10/28/93; "</u>.....<u>the security for the Note had become exhausted and worthless, without any act on the part of the Plaintiff".</u> It is an undenied fact that TORLONE was not with Plaintiffs loan closers on 3/19/90 or 10/28/93.

TORLONES'S Declaration did not state he was present at foreclosure auction to protect Plaintiff's equity; (he is merely a collection agent). His Declaration does not claim he attempted to collect rents or profits to reduce Plaintiffs financial exposure; or foreclose on the Plaintiffs only other security: the cheap, portable SONY T.V. or whether fraudulent promises were made to the Defendants or not.

On 4/25/97, Plaintiff filed its Separate Statement of Undisputed Facts; **which does not mention that Plaintiffs failed to defend their equity, or that the balance due under**

the contract, or the $2454 in attorney fees, and "fraud", were still in dispute.

TORLONE's Declaration does not state that Plaintiff attempted to foreclose ahead of the senior lien holder, 6 ½ months earlier, in order to prevent their Note from becoming supposedly **"value-less"**. It does not state the value of property at auction sale; or that Plaintiff's failure to defend equity, value of contract and fraud; were all issues in dispute.

Defendants' had previously hired their legal counsel to review Plaintiffs Complaint and Summary Judgment Motion. In turn, counsel prepared (2) Separate Statements of Disputed Facts in Opposition to Plaintiffs Motion for Summary Judgment; a Declaration in Opposition to Plaintiffs Motion for Summary Judgment; a Memo. of Points and Authorities; plus an Amended Memo of Points and Authorities which were filed on 5/2/97 and 5/8/97. (App F31, F36, F41, F43, F45,and F49).

The Defendants disputed facts claimed that Plaintiffs "falsity" and "misrepresentation", caused Defendants to be "defrauded into signing Plaintiffs Note"; and that, "Summary Judgment should be denied unless there are not triable issues of fact", (per CCP437(c), which provides Summary Judgment cannot be obtained if there are triable issues of fact).

Defendants Amended Memo of Points and Authorities claimed there was fraud entitling Defendants to trial per CCP437(c); plus citations from: CC1565, CC1572, CC1585, CC1608, CC1623, CC1640, CC1643, and CC3412.

On 5/8/97, Plaintiff filed its Reply to Defendants Opposition to Motion for Summary Judgment; plus, their Evidentiary Objection to the Declaration of Richard White and Janet White. (App.F45).

Plaintiffs Reply only refers to the Parol Evidence Rule (CCP1856(a)); the word **'fraud"** does not appear anywhere within their Reply Brief.

Plaintiff had no defense to any of the legal citations set forth in Defendants Amended Points and Authorities.

The last paragraph of Plaintiffs "Evidentiary Objections" states: **"Objection. Evidence Code Section 350. Irrelevant; The parole evidence rule bars extrinsic evidence of prior contemporaneous agreements to add to or modify the terms of an integrated written instrument unless there is**

fraud which has not been alleged. See FPI Development. Inc., v. Nakashima(1991) 231 Cal.Ap/3d 367,282 Cal.Rptr. 508."

On about 5/14/97, without their counsels approval; Defendants filed an ex-parte motion to file a Cross Complaint against Plaintiff, their attorneys and CARRILL; which alleged negligence and fraud. Defendants counsel subsequently took the exparte motion off calendar without Defendants consent.

Counsels' reason: He didn't want to have the reputation of suing a fellow attorney.

On 5/16/97, Defendants Counsel orally argued fraud and misrepresentation were triable issues of fact; and that, there was no place in Plaintiffs' Default Provision that allowed for any recourse against the Defendants. He did not argue the specific merits of Defendants proposed Cross-Complaint; Plaintiffs failure to defend equity; Plaintiffs only security was "rents, profits" and the cheap" SONY T.V; or that Plaintiffs Motion was prohibited pursuant to CCP592.

CCP482.040 is mandatory. It requires that TORLONE must not only be able to testify competently to the facts which he personally witnessed; but also, his Declaration must state his belief in the reliability of his informants.

TORLONE's Declaration does not name his informants; **and it makes no reference whatever to the disputed $2454 in attorney fees; Plaintiffs failure to defend their equity; the disputed contract balance; or allegations of fraud.**

Judge JOSEPH granted the Plaintiffs Motion on grounds that "fraud" did not apply to Plaintiffs' contract; and that **"Defendants have failed to show the existence of any triable issue of fact." (App. E)**

At the time that JOSEPH was first assigned to this case; Defendants' were not aware that he was a former State Prosecutor under the supervision of KREMER; when KREMER was attempting to have Defendant found "insane". Therefore Defendants' had no absolute basis for challenge. Since this case was first heard; JOSEPH retired and was appointed as a pro tem Justice to the Appellate Court by KREMER.

The Defendants Opening Brief to the 4th District Court of Appeals argued fraud by CARRILL; misrepresentation by TORLONE; Plaintiffs note was specifically not a recourse note;

rents, profits and T.V. were Plaintiffs only security; legal mistake of counsel was excused; CC1649, (contract to be interpreted in favor of the promisee); CCP1856g, (fraud exception to Parol Evidence); CCP1916 (Impeaching Judgment). CCP663(1) [Vacating Judgment] Smith v. Wade; Cofelt vs. Cofelt and U.S. v Throckmorton.

The Plaintiffs Opposition Brief did not deny fraud by CARRILL; misrepresentation by TORLONE; note was not specifically recourse; Plaintiffs' only security was rents, profits and T.V.; there was not legal mistake of counsel; nor, was there any specific argument against the validity of Defendants numerous legal citations, except the Parol Evidence Rule.

Plaintiffs' failure to deny made Defendants allegations legally true.

Defendants Reply argued that they cannot be penalized for mistake and error of their legal counsel; Plaintiffs Opposition did not deny the material allegations of fact set forth in Defendants Opening Brief; therefore becoming legally true, citing George v. Beatty as their legal authority.

Just prior to Oral Argument, at the Court of Appeal; Defendants were notified that Acting Presiding Justice HUFFMAN and Associate Justices NARES & HALLER would decide this case. Defendants subsequently notified HUFFMAN in writing that he would be challenged.

On 4/12/99, the Plaintiff did not appear to deny any of Defendants allegations; and HUFFMAN stated he would consider the challenge. CCP170.6 exempts Appellate and Supreme Court Justices from challenge; but California BPC 6068 does not.

Defendant challenged HUFFMAN on the basis that, he was on a vendetta against the Defendants'over a period of years, as a prosecutor, he intervened in 3 civil libel and slander lawsuits against the Defendant, Richard White, and then unsuccessfully attempted to have the Defendant found insane and committed to an asylum. HUFFMAN denied the challenge.

Defendant argued the value of property at default was approximately $350,000; the rental income; and the T.V.; were Plaintiffs only security; Plaintiffs extrinsic fraud; prohibited Summary Judgment; attorney error is excusable; and that, the disputed value of Trust Deed; were all triable issues of fact.

Defendants Appeal was denied, and the courts opinion was authored by HUFFMAN; who claimed that Defendants were subject to the Parol Evidence Rule. His Opinion stated that Plaintiff was entitled to Summary Judgment, as a matter of law; because a fraudulent promise, "directly contradicts the express terms of the integrated agreement" HUFFMAN then quoted Barber v. Marina Sailing: which directly contradicted his own Opinion; which stated that, "All doubts should be resolved in favor of the Defendants."

HUFFMANS' Opinion did not mention the disputed Note value or attorney fees, rents or profits, or the T.V.; Plaintiffs failure to defend equity; or the disputed value of property at the auction sale.

Defendant filed a petition for Rehearing, pursuant to Rule 132(b); which provides in part: **"any party may correct the record; and shall make it conform to the truth"**. And also cited Irer v. Gawn. Defendants also made an Application to Produce Evidence of bias by HUFFMAN, NARES, and HALLER. (Declaration of Richard White, and letter to HUFFMAN, et al App. F1 & G74).

Defendants Petition for Rehearing cited CCP580a; CCP592; CC1572; CCPP437c; plus the undenied allegations of fraud; note value; rents, profits and T.V. as only security; and Barber v. Marina Sailing, as absolute defenses. HUFFMAN personally denied Defendants Application for evidence and Rehearing. (App. B).

Defendants Petition for Hearing before the California Supreme Court cited the undenied allegations of rents, profits and T.V. were Plaintiffs only security; Defendants value of property at auction was true; attorney error was true; Judicial bias was true; and it was also true that the $2454 in attorney fees was still in dispute. Defendants also cited CCP437c, CCP580a, CCP592, and CCP1856g as absolute defenses against Summary Judgment; all of which, were summarily denied by Supreme Court Justice GEORGE, without comment. (App.A).

(V) SUMMARY OF ARGUMENT

Existing public Court records prove that the courts have had a long-standing bias, or hatred toward the Defendants.

In DO20483, it was manditory for the trial judge to recuse himself after challenge, but did not. His absurd rulings

and hatred toward the Defendant undoubtedly had an adverse affect on the outcome of Defendants trial.

Presiding Judge of Superior Court, HOWATT intentionally appointed ROSADO to hear STATE FARM v. WHITE. On appeal, the Presiding Justice KREMER and HUFFMAN, were both reminded in writing of their bias and hatred of the Defendants. They assigned the case to 3 more of their cronies (including NARES); who promptly wrote an Opinion that sounded more like ambulance-chasing lawyers defending a crooked used car dealer. HUFFMAN, NARES & HALLER would later hear DO29409.

In DO20409, the Plaintiffs' loan closers made 3 fraudulent promises that Plaintiff would have no recourse against the Defendants in the event of default on the loan.

The contract that Plaintiff sued upon, did not allow any personal recourse against the Defendants except a cheap, portable SONY T.V. Nevertheless, the Plaintiffs attorneys' sued upon their bogus claim of full recourse.

In total, at least 4 separate attorneys with the law firm of Paris and Paris; participated in pleadings related to their motion for Summary Judgment. It is presumed that each of Plaintiffs attorneys are highly skilled in the field of Complaints and Summary Judgments. When Plaintiffs Motion was filed, each of their attorneys reviewed the sparsely worded Complaint and Answers, before proceeding on their respective parts in Motion Pleadings; in order to determine the truth or falsity of Plaintiffs claims.

Accordingly, Plaintiffs Attorneys knew for a fact that the Defendants' Complaint pleadings were based upon a fraudulent contract theory; and also that the Complaint could not meet the minimal requirements for stating a cause of action per CCP480(a) & (b).

Likewise, Plaintiffs attorneys also knew for a fact that their Motion for Summary Judgment, also did not meet the minimal requirements to state a cause of action per CCP592(a) & (b), or Rules 312 and 313. Additionally, Plaintiffs "evidence" (TORLONE Declaration); was nothing more than hearsay that did not attempt to explain the fraud by Plaintiffs 3 loan closers; did not set forth the value of property at auction sale; the obvious surplus; nor did the motion even bother to mention the

disputed $2454 in "reasonable attorney fees"; rents, profits, or cheap T.V.

Defendants filed a Cross/Complaint against the Plaintiffs for intentional fraud; and mis-representation of triable issues of fact; which was dismissed by Defendants timid legal council.

Defendants hired legal counsel had drafted incomplete Oppositions to Plaintiffs Motion, and conducted oral argument; but nevertheless, clearly established that there were triable issues of fact; which absolutely prohibited a Summary Judgment per CCP437(c) and CCP 580 (a); i.e., **a Summary Judgment cannot be had without determining the value of property at auction sale.**

When trial Judge, Joseph was appointed by Presiding Justice HOWATT to hear DO29409, Defendants were unaware at the time that JOSEPH was a State prosecutor under the supervision of KREMER at the Attorney General's office. KREMER was in collusion with HUFFMAN; but at the time Defendants; had no absolute basis for challenge of JOSEPH.

JOSEPH had every reason to believe there were triable issues of fact; that were completely aside from the subject of "fraud"; which he dismissed by virtue of the Parol Evidence Rule (CCP1856(a)).

He also knew for a fact that the $2454 in attorney fees; value of note; and Plaintiffs failure to defend equity were in dispute; but granted Plaintiffs Motion and **attorney fees anyway**.

Appellate Presiding Justice, KREMER intentionally appointed fellow cronies; HUFFMAN; NARES & HALLER to hear DO29409. During the course of Defendants Opposition to Plaintiffs Motion, Opening Brief and Reply to the Appellate Court; Plaintiff had consistently refused to acknowledge or deny obvious allegations of material fact; that included value of property at auction; rents, profits and T.V.; and the disputed attorney fees; which not only made them legally true; but gave Defendants an absolute defense against Summary Judgment per CCP437(c).

HUFFMAN was challenged on grounds of serious bias; he refused, and then personally authorized the Opinion that "fraud" was not an issue in this case; even though he had valid

reasons to believe that theory was false. At the same time, he refused to mention, or acknowledge; that Defendants triable issues of fact were now legally true.

The "clincher" for HUFFMAN's absurd ruling; was his own legal citation in BARBER; which states that, "all doubts must be resolved in favor of the Defendant".

There is no logical reason to believe that the Rulings of DO20483 or DO29409; were not the result of long-standing bias and conflict-of-interest on behalf of the Courts.

No one is above the law, but Justices are excluded from CCP170.6. CCP1856(a) and (g) should be interpreted to incluse all types of fraud, because it is in conflict with other State and Federal Law. Furthermore, Judicial corruption should not be allowed in any State; and the U.S. Supreme Court should refer this case to the U.S. Justice Department for further investigation.

VI. IN PART, THE PURPOSES OF CHALLENGE AND RECUSAL, ARE TO PREVENT INJUSTICE AND JUDICIAL CORRUPTION.

DID THE MIS-APPLICATION OF CALIFORNIA CIVIL CODE OF PROCEDURE 170.6, PREVENT THE DEFENDANTS FROM HAVING A FAIR TRIAL?

1. CCP1856 IS IN CONFLICT WITH STATE AND FEDERAL LAW.

The Plaintiff filed a Complaint for recourse on their note, plus attorney fees; alleging that the deficiency of their note was caused thru no fault of their own. It is a matter of law pursuant to CCP580a; that the Plaintiffs Complaint must allege the date of Foreclosure sale; sale price of property; and the actual value of the property at the time of sale. Plaintiffs Complaint stated none of those facts.

Defendants answered Plaintiffs Complaint in pro se, and denied the amount of the value of the Note and the attorney fees. Defendants also alleged that the Defendants were induced to sign the note by virtue of fraud and misrepresentation of Plaintiffs loan closers; and that Plaintiffs failed to defend their equity at auction.

Plaintiffs filed their motion for Summary Judgment. The body of Plaintiffs Motion claimed that they were entitled to Summary Judgment"as a matter of law", pursuant to CCP437.c.

There is no part of CCP437c that allows a Summary Judgment, if there is fraud, or other triable issues of fact. The Defendants Opposition to Motion re-alleged that there was fraud and triable issues of fact.

The Plaintiffs REPLY did not deny that the value of the Note and attorney fees were in dispute; or that they had failed to defend their equity at auction.

Defendants' counsel established triable issues of fact at oral argument.

By Defendants written pleadings, Judge JOSEPH knew for a fact that the Plaintiffs attorney fees were in dispute; and that CCP1856 could not apply if CC1574 and CC1623 were enforced against the Plaintiffs.

Defendants' Brief to the Appellate Court clearly established triable issues of fact that were undenied by the Plaintiff.

HUFFMAN's Opinion stated that Security Pacific was entitled to Summary Judgment as a matter of law, because, the trial court properly determined the Whites evidence was barred by the Parol Evidence Rule." The Opinion also stated, "the fraud exception to the Parol Evidence Rules, does not apply as the evidence sought to be introduced is of a fraudulent promise, which directly contradicts the express terms of the integrated agreement". And also, "There is a so-called fraud exception to the Parol Evidence Rule. Subdivision (g) of Section 1856 provides in pertinent part, 'this section does not exclude other evidence..... to establish illegality or fraud'. The provision, however, is unavailing to the Whites."

Paragraph 74 of Defendants Petition for Rehearing, stated that, the rental income was about $900 per month, mentioned 6 times; the property value exceeded $300,000; which was mentioned 8 times in Defendants Briefs; CCP 580a, 11 times; CCP 592, 12 times; the disputed $2454 in attorneys fees, 26 times; and the (cheap SONY T.V.) 64 times. Yet, not one of these issues have ever been responded to, or denied by, the Respondent or the Appellate Court.

Paragraph 13 of Defendants Petition states:
"Respondents so-called "undisputed evidence"; proves that TORLONE was not a first-hand witness to anything. At best, TORLONES's "proof" shows that he was in collusion with the

Respondents in an ongoing scheme of fraud and deception. This allegation is also undenied.

In error, Defendants failed to cite the hearsay rule, FRE 804a(4)(5) which prohibits the use of a Declaration, which is not made by a first-hand witness (except death, etc); or because it was procured for reasons of wrongdoing or preventing (the real) witness from testifying.

CCP580(a) is specific. Plaintiff cannot sue for a Summary Judgment unless the date of foreclosure sale; amount of purchase price, and value of property at sale; are set forth in Plaintiffs Complaint. They were not.

CCP437c is specific. Plaintiff cannot obtain a Summary Judgment if fraud or other triable facts in dispute were alleged. The Plaintiff does not deny that those facts were alleged.

CCP592 is specific. All triable facts must be heard by a jury.

CCP1856g is specific. Fraud is excluded from the Parol Evidence Rule.

CC1574 is specific. "Actual fraud is always a question of fact."

CCP170.6 is specific; yet contradictory. Judges must accept the challenge if there is bias or conflict of interest; but Appellate and Supreme Court Justices need not. It is also in conflict with DO20483, (ROSADO refused the challenge); and in DO29409, (HUFFMAN refused the challenge. (NARES & HALLER should have recused themselves on their own motion.)

In DO29409, the opinion of the Appellate and Supreme Courts are in direct conflict with CCP437c, 580a, CCP663, CCP1856g, and CC1574. The U.S. Supreme Court must make an independant judgment of the facts; and that **contraverted allegations of fraud cannot be resolved on a motion for Summary Judgment,** as follows:

"The U.S. Supreme Court has an obligation to test challenged Judgments against the 1st and 14th Amendments; and in doing so, cannot avoid making an independent constitutional judgment on the facts of the case." Bose Corp v. Consumers Union of United States, Inc. **80Led 502.**

"If a United States Court of Appeals consludes that the findings of a United States District Court are clearly erroneous, it may reverse them under Rule 52a of the Federal Rules of Civil

Proceedure." Dayton Board of Education v. Brinkman. **53 LED 2d 851.**

Kelly v. Southern Pacific Company **42LED 2d 498;** (D 47) the U.S. Supreme Court must set aside a lower Court ruling on the facts, as applied to the law; if the finding is "clearly erroneous".

In FREE V. BLAND, 8LED 2d 182 (D 48) "9 controversial allegations of Fraud cannot be resolved upon Motion for SummaryJudgment, but only by a trial on the merits."

The terms of CCP1856(a) are ambiguous; specific, contradictory as follows: " The terms of the writing intended as the final expression of their agreement; may not be contradicted by evidence of any prior agreement, or of a contemporaneous oral agreement." In this case, the Plaintiff primarily hinged its case on CCPPP1856(a); the supposed absence of fraud, and the supposedly non-existent triable issues of fact; which was absolutely false.

2. THE COURTS LEGAL AND FACTUAL ERROR.

The Defendants were induced into the Plaintiffs agreements, on 3 separate occassions, by virtue of fraud on behalf of Plaintiffs loan closers. These allegations were undisputed in all of the Plaintiffs reply papers in the Trial Court and the Appellate Court. Whether or not the 3 agreements were intended to be the final expression of the agreement; is ambiguous, and subject to multiple interpretations. If the 3 agreements cannot be contradicted by prior evidence of fraud; which was a contemporaneous oral agreement; then it is in direct conflict with CCP1856g; which allows evidence of illegality or fraud. CCP1856(a) is also in conflict with Federal Rule 60b; which allows relief from Judgment, where an adversay, engaged in fraud, or misrepresentation. CCP1856(a) is also in conflict with the U.S. Case of FISKE v. BUDER which allows that fraud, whether intrinsic, or extrinsic. Misrepresentation or other misconduct; are express grounds for relief; and "there is no sound reason for their exclusion".

HUFFMANS Opinion states, "While the note does not specifically state that the WHITES were personally liable, notwithstanding the deed of trust; **no other conclusion may be drawn** from the provision Security Pacific could obtain a

judgment against them for the outstanding balance of the note at the time of default."

It is ironic that HUFFMAN claims that there must bave been some sort of inferred "contemporaneous agreement" and concluded that the Plaintiff had some unknown factual reason for full recourse; **when neither the Plaintiff, nor the Defendant have ever made such a claim.** But on the other hand, HUFFMAN claimed that the Defendants **actual "contemporaneous" agreement** was somehow invalid, and unenforceable.

This double-standard application of the law denies equal protection, and due process.

Defendants Opening Brief to the Appellate Court cited COFFELT V. COFFELT, and U.S. V. THROCKMORTON; which states that:**"active concealment of a material fact is having the same effect as a positive misrepresentation:** and **"fraud perpetrated by a party, or his attorney is extrinsic if it prevents the other party from having his day in court."**

Defendants Petition for Re-hearing cited BARBER v MARINA SAILING, INC..

Defendants Appeal to the California Supreme Court cited Schrader Iron Works v. Lee; and Gay v. Torrance; which state:

> **An overt act of the judge which prevents the complaining party from having a fair and impartial trial ; such irregularity must be shown by affidavits presented in conjunction with a new trial motion. Schrader Iron works, Inc. v. Lee (1972) 103 Cal.Rptr. 106, 26 C.A.3d 621.**
>
> **"Personal misconduct of the judge having a case under advisement may be an 'irregularity in the proceedings of the court' for which a new trial may be granted. Gay v. Torrance (1904) 78 P.540, 145 C. 144."**

Each of those Courts knew for a fact that the overt acts of Judges in both DO20483 and DO29409 were deserving of a new trial.

The Presiding Justice of the California Supreme Court has read Defendants Pleadings which proved that there were absolute triable issues of fact ; but summarily denied the

Defendants Petitions on 7/21/99, without comment.

Clearly, the rulings of Federal Courts are in direct conflict with the State Trial Court; Appellate and California Supreme Court rulings.

3. JUDGMENT SHOULD BE REVERSED.

The only logical conclusion that can be reached is; that the bias of the Appellate Court has permeated the Supreme Court to such a degree; that it was not possible for the Defendants to receive a fair hearing in either one of those courts. On these grounds, this case should be remanded back to the trial court, for resolution of all triable issues of fact.

Justice and equity requires a more definitive opinion on the enforceability of CCP1856.

VII OVERT ACTS OF JUDGES ARE GROUNDS FOR A NEW TRIAL. WERE THE DEFENDANTS DENIED A FAIR TRIAL BECAUSE OF IRREGULARITIES ON BEHALF OF JUDGES AND PLAINTIFFS COUNSEL?

1. JUDICIAL MISCONDUCT.

CCP 170.6(1) excludes peremptory challenges of Appellate and State Supreme Court Judges; who may be biased, or corrupt. The terms of CCP 170.6(1) are absolute and specific: No lower Court Judge shall hear an action, <u>if there is prejudice against any party in the action.</u>

Under California Law, the undisputed Declaration of the Defendant, <u>"is a pleading"</u>; and therefore, is legally true. According to the Declaration of WHITE; KREMER, HUFFMAN and NARES had severe bias, motive and intent, to corrupt the Defendants verdict. HUFFMAN, NARES & HALLER had the undeniable power to arrest the Defendant if his allegations were false. The Defendants' undisputed Declaration, easily convinced, HALLER in DO29409; that HUFFMAN & NARES had corrupt motive; and together agreed to deny Defendants Petition. HUFFMAN, NARES & HALLER were all parties to the Defendants denial of a fair trial; clearly there was potential bias; and lack of a quorum of qualified Justices to hear this case.

2. CHALLENGE AND RECUSAL PREVENTS

INJUSTICE.

CCP 170.6(1) is in conflict with itself, Local Federal Rule 83.5f(5), and Business and Professional Code 6068a,b,c,d,g,o; and common law; because their purpose is to weed out potential bias and corruption; however, it exempts Appellate and Supreme Court Justices.

3. OVERT ACTS OF JUDGES AND LEGAL ERROR ARE GROUNDS FOR A NEW TRIAL.

The purposes of Rule 83.5f(5) and BPC6068a,b,c,d,g, and o are specific; they are to support the laws of the State; support actions that are consistent with the truth; and never attempt to obstruct justice by distortion of facts and law.

In COFFELT; U.S.; SCHRADER, & GAY; it is abundantly clear that the Justices in this case knew there was every legal reason to grant the Defendants a new trial; but did not.

4. DEFENDANTS DENIAL OF RE-HEARING WAS AN ABUSE OF DISCRETION.

When the Defendants filed their Petition for re-hearing for the Appellate Court; The Defendants' amended their Petition for Re-Hearing; which set forth the Courts bias and reinerated the numerous triable issues of fact as already set forth here-in above. HUFFMANS's denial of Defendants Evidence which made a clear showing of Courts bias and supplemental facts and legal error constituted an abuse of the courts descretion.

> **"While a motion to permit an amendment to a pleading to be filed is one addressed to the discretion of the court...it is a rare case in which a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case...If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party. It is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error, but an abuse of discretion."[Calif. Cas. Gen. Ins. Co. V. Sup. Ct. (Gorgei) (1985) 173 CA3d 274,218**

On these grounds of error and bias, this case should be

remanded back for trial. (Also see Develop-Amatic Engineering v. Republic Mortgage Co.).

VIII STATE AND FEDERAL LAW DOES NOT ELIMINATE "INTRINSIC" OR "EXTRINSIC" FRAUD, AS A CAUSE TO DENY A MOTION FOR SUMMARY JUDGMENT.
DID THE MISAPPLICATION OF CCP1856(A) DENY THE DEFENDANTS A FAIR TRIAL?

1. NO ONE IS ABOVE THE LAW.

According to the State and Appellate Courts interpretation of CCP1856(a); it is okay for the Plaintiff to commit "extrinsic" fraud; but not "intrinsic" fraud. State and Federal law does not allow the Plaintiff to be above the law.

2. CCP1856(a) SHOULD BE INTERPRETED TO INCLUDE "INTRINSIC" AND "EXTRINSIC " FRAUD.

CCPP1856(a) is discriminatory and prohibited by State and Federal law.

3. CCP1856(g) IS INVALID.

CCP1856(g) allows "fraud" in evidence; but apparently CCP1856(a) does not. However, State and Federal law prohibits the exclusion of "fraud". Therefore, CCP1856(a) is invalid.

IX SHOULD CCP170.6 BE INTERPRETED TO INCLUDE APPELLATE AND SUPREME COURT JUSTICES?

CCP170.6 gives class privilege to Appellate and California Supreme Court Justices; but not to lower California Court Judges. Class privilege is prohibited in all forms of Democratic Common Law. Therefore, CCP170.6 should include all California Judges.

X THE INHERENT POWER OF THE U.S. SUPREME COURT IS TO PREVENT INJUSTICE AND CORRUPTION IN LOWER COURTS. SHOULD THE U.S. SUPREME COURT REFER

THIS CASE TO THE U.S. JUSTICE DEPARTMENT FOR FURTHER INVESTIGATION?

The U.S. Supreme Court is not limited to mere questions of fact and law; but is committed to uphold the law of the U.S. Constitution.

The U.S. Constitution prohibits government oppression and corruption. Therefore, there is no legal reason why the U.S. Supreme Court should not refer this case to the U.S. Justice Department.

XI DAMAGES

Pursuant to California Law, the Defendants are entitled to be granted damages under CCP907 and CCP908; that are "just". The Plaintiff and their counsel knew for a fact; that their contracts did not allow full recourse against the Defendant; and that there were numerous triable issues of fact, which prevented a Summary Judgment. They also knew for a fact that, as a matter of law; CCP580(a) strictly prohibited a Summary Judgment because they had not determined the subject property value at the time of auction sale.

The Defendants have incurred at least $12,000 in costs toward preparing Appellate and U.S. Supreme Court papers in this case.

Whether or not the U.S. Supreme Court considers "costs only", as being "just"; it should also consider what damages might be "just"; it should also consider what damages might be "just", as opposed to being "punitive" and whether "just" damages can be achieved by the Defendants in a California State Court.

XII CONCLUSION

The findings in the U.S. cases of DUKE; GUZMAN; BOSE CORP; & FREE are also specific: erroneous conclusions of fact and law can be set aside for a trial on the merits.

The Plaintiff knew its lawsuit was fraudulent, and

founded upon a false Declaration that was admissable hearsay.

The Trial Court, the Appellate Court and the California Supreme Courts findings of fact and law were clearly erroneous, and the Appellate Court does not deny it had severe bias against the Defendants. Furthermore, the allegations against HUFFMAN, KREMER & NARES are now legally true under California law.

CCP1856a is clearly in conflict with CCP1856g; CCP437c; CCP592; and other citations herein.

CCP170.6 is also in conflict with the purposes of State and Federal law; DO20483 and DO29409; because it exempts potentially biased and corrupt Justices of the Appellate and California Supreme Courts.

XIII REASONS TO GRANT PETITION

Because CCP1856a and CCP170.6 are in direct conflict with the purposes of State and Federal Law, it is of major public importance to resolve these questions in order to preserve the integrity of the Courts.

If "fraud" is allowed to permeate the legal system; or if Judges can refuse challenge with impunity; or issue erroneous decisions against the law; grave injustices can occur. These injustices, could send innocent men to prison; or have them found "insane".

Respectfully submitted,
Dated: December 23, 1999.

Richard White

Janet White

APPENDIX A

Fourth Appellate District, Division One, No D029409
S079754

IN THE SUPREME COURT OF CALIFORNIA

SECURITY PACIFIC FINANCIAL SERVICES, Respondent

v

Richard E. White Et Al., Appellants

Appellants' petition for revied DENIED

GEORGE
Chief Justice

SUPREME COURT
FILED
July 21, 1999
Robert Wandruff Clerk
Deputy

Appendix B

APPENDIX B

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SECURITY PACIFIC FINANCIAL SERVICES, INC., Plaintiff and Respondent, v. RICHARD E. WHITE et al., Defendants and Appellants.	D029409 (Super. Ct. No. 705440) **Filed** **May 10, 1999**

THE COURT:

The petition for rehearing and application to produce evidence are denied.

S/HUFFMAN, Acting P.J.

Copies to: All parties

APPENDIX C

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SECURITY PACIFIC FINANCIAL SERVICES, INC., Plaintiff and Respondent, v. RICHARD E. WHITE et al., Defendants and Appellants.	D029409 (Super. Ct. No. 705440) **Filed** **April 19, 1999**

APPEAL from a judgment of the Superior Court of San Diego County, Anthony C. Joseph, Judge. Affirmed.

In this action on a promissory note, Richard E. White and Janet B. White appeal from a summary judgment entered in favor of plaintiff, Security Pacific Financial Services, Inc. (Security Pacific). We conclude the trial court properly determined the Whites' evidence was barred by the parol evidence rule and Security Pacific was entitled to summary judgement as a matter of law. Accordingly, we affirm the judgement.

BACKGROUND

Security Pacific's complaint alleges the Whites entered into a promissory note on October 28, 1993. The note was modified on December 30, 1994, requiring White to pay $78,333.79 in monthly installments of $1,043.40, beginning January 30, 1995. The Whites had defaulted on the note, and the deed of trust securing the note had been rendered valueless "by virtue of a foreclosure proceeding by a senior lienholder." Security Pacific sought $78,204.79 in principal, interest at the rate of 15.55 percent per year and attorney fees, as provided in the note.

In answering, the Whites, in propria persona, alleged the note "should be rescinded or cancelled . . . because it was created through the fraud of plaintiff [.]" Security Pacific assertively "misrepresented to defendants that [it] could proceed with further legal action if property was foreclosed upon."

Security Pacific moved for summary judgment. In its separate statement, Security Pacific asserted it was undisputed that the Whites executed the promissory note and defaulted on it; the note was secured by a third deed of trust, however, the proceeds from the note were not used to purchase the property; a senior lienholder foreclosed on the property in April 1996 and no portion of the sale proceeds remained to be applied to Security Pacific's note; and the note provided for annual interest of 15.55 percent and reasonable attorney fees in any collection action. Dave Torlone, a Security Pacific collection officer, attested to these facts in a declaration.

Security Pacific also submitted copies of the "Combined Note and Security Agreement, in the "Modification Agreement" and the Deed of Trust and Assignment of Rents." The note provided that upon default, Security Pacific could declare the remaining balance immediately due, and the Whites were responsible for any costs associated with enforcing a judgment-against them. The modification increased the monthly payment amount and extended the note's maturity date; in all other respects the note terms were unchanged.

In their separate-statement, the Whites asserted: "Plaintiff's misrepresentations about the note induced defendants to execute the note," and "[p]laintiff's employees' conduct prevented defendants from discovering the falsity of plaintiff's employees misrepresentations. "In support, they filed a joint declaration stating in pertinent part:

"2. At the time of execution of plaintiff's note, and although we were available to execute it during plaintiff's normal business hours and under normal circumstances, plaintiff's loan personnel did not notify us to come in to execute the note and trust deed until right before the close of their business for the day and told us that if we did not come in that day, they would not make us the loan. As a result, we had no time to read the documents which plaintiffs loan personnel required us to sign. Even to sign the note and related papers kept us at plaintiffs bank branch well after it closed for the day. _.

"3. Although we did not have time to read the loan documents, we did ask plaintiff's loan employees whether or not, if the loan went into default, we would be personally liable for its payment, and were informed by plaintiff's employees that plaintiff would foreclose its

note against the 'property and would obtain repayment through the foreclosure sale of the property, and not from us personally. In reliance on that representation from plaintiff's employees, we signed the note and deed of trust and other documents presented to us by plaintiff. But for plaintiff's employees' statements that plaintiff would look solely to the property for repayment of its loan in the event of default, we would not have signed the note."[1]

The Whites did not respond to the points Security Pacific raised in its separate statement, as required. (Code of Civil Procedure,[2] § 437c, subd. (b).) The asserted facts therein were thus undisputed.

In a tentative telephonic ruling, the court granted Security Pacific's motion as the undisputed evidence showed it was entitled to judgment as a matter of law. The court sustained Security Pacific's objection to the Whites' declaration as violative of the parol evidence rule. It further explained, in [t]he fraud exception to the parol evidence rules does not apply as' the evidence sought to be introduced is of a fraudulent promise which directly contradicts the express terms of the integrated written agreement." After oral argument, in which attorney specially appeared for the Whites, the court confirmed its ruling. Judgment was entered on September 29, 1997.

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[1] On appeal, the Whites claim they were fraudulently induced to sign the modification agreement, as opposed to the promissory note and deed of trust. The discrepancy does not, however, affect our analysis.

[2] All statutory references are to the Code of Civil Procedure unless otherwise specified.

The rule as applied to contracts is simply that as a matter of substantive law, a certain act, the act of embodying the complete terms of an agreement in a writing (the "integration"), *becomes the contract of the parties.* The point then is, not how the agreement is to be proved, because as a matter of law the writing-is the agreement. Extrinsic evidence is excluded because it cannot serve to prove what the agreement was, this being determined as a matter of law to be the writing itself.' [Citations.]" (*Id.* at § 963, p. 911, original italics.)

The Whites contend they raised a triable issue of fact regarding whether Security Pacific fraudulently induced them to execute the promissory note by assuring them its sole recourse upon default would be under the deed of trust which collateralized the loan. There is a so-called fraud exception" to the parol evidence rule. Subdivision (g) of section 1856 provides in pertinent part, n [t]his section does not exclude other evidence . . . to establish illegality or fraud." The provision, however, is unavailing to the Whites.

"'Promissory fraud' is a promise made without any intention of performing it. [Citations.] The fraud exception to the parol evidence rule does not apply to such promissory fraud if the evidence in question is offered to show a promise which *contradicts an integrated written agreement.* Unless the false promise is either independent of or consistent with the written instrument, evidence thereof is inadmissible. [Citations.] [§] The law in California was stated by our Supreme Court as follows:
"Our conception of the rule which permits parol evidence of fraud to establish the invalidity of an instrument is that it must tend to establish some independent fact or representation, some fraud in the procurement of the instrument or some breach of confidence concerning its use, and not a promise directly at variance with the promise of the

writing.' [Citation.]" (*Alling v. Universal Manufacturing Corp.* (1992) 5 Cal.App.4th 1412, 1436-1437, italics added; accord, *Simmons v. Cal. Institute of Technology* (1949) 34 Cal.2d 264, 274; *Bank of America etc. Assn. v. Pendergrass* (1935) 4 Cal.2d 258, 263; 2 Witkin, *supra,* § 1000 p. 945.)

> Here, the "DEFAULT" paragraph of the promissory note provides in pertinent part:
> "If I (l) don't pay on time, . . . you may (a) remedy my default and charge Interest at the Contract Rate on amounts you pay, and (b) declare all I owe immediately due. [§] I will pay your court costs and reasonable attorney fees', including fees incurred in collecting and enforcing any judgment, if the original Amount Financed is $5,000.00 or more."

While the note does not specifically state the Whites were personally liable notwithstanding the deed of trust, no other conclusion may be drawn from the provision Security Pacific could obtain a *judgment* against them for the outstanding balance on the note at the time of default.[4] The Whites' declaration that Security Pacific assured them it would seek recourse only through the collateral was directly at odds with the note, and thus the court properly excluded it under the parol evidence rule. Because Security Pacific indisputably established the elements of its cause of action, it was entitled to summary judgment as a matter of law.[5]

---

[4] A mortgagor may be liable for a deficiency judgment where, as here, the collateral was not given to secure payment of the balance of the purchase price of the encumbered property, or to secure repayment of a loan which was used to pay any part of the purchase price of a dwelling occupied by the purchaser. (§§ 580b, 726, subd. (b).)

II
DISCUSSION
A

Summary judgment is proper only where there is no triable issue of materiel fact and the moving party is entitled to judgment as a matter of law. (§ 473c, subd. (c).) We review the trial court's granting of the summary judgment motion de novo. *(Villa v. McFerren* (1995) 35 Cal.App.4th 733, 741.) "In doing so, we must strictly scrutinize the moving party's papers. [Citation.] The declarations of the party opposing summary Judgment, however, are liberally construed to determine the existence of triable issues of fact. [Citation.] All doubts as to whether any material, triable issues of fact exist are to be resolved in favor of the party opposing summary judgment. [Citation.] n *(Barber v. Harina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.)

B

"The parol evidence rule, with certain exceptions, prohibits the introduction of any; *extrinsic evidence* (oral or-written) to vary or add to the terms of an *integrated written-instrument* (a contract, deed or will". [citations.]"[3] (2 Witkin, Cal. Evidence (3d ed. 1986) § 960, p. 908, original italics.) The parol evidence rule does not exclude evidence for any of the reasons ordinarily requiring exclusion, based on the probative value of such evidence or the policy of its admission.

---

[3] Section 1856, subdivision (a) provides: "Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement."

[5] Plaintiffs' argument on appeal is largely devoted to the notion they were harmed by their counsel's failure to discuss at the hearing on the summary judgment motion each of the numerous issues they raised in their points and authorities. Counsel's conduct is, of course, not at issue in this appeal. In any event, the trial court may decide a motion solely on the basis of the parties' affidavits and is not required to even entertain oral argument. (Wilburn *v. Oakland Hospital* (1989) 213 Cal.App.3d 1107, 1111.) Under the circumstances here, it appears no argument of the Whites' counsel would have resulted in a more favorable outcome to them.

The Whites cursorily raise a variety of other issues—for instance, that the promissory note was not an integrated agreement and thus the parol evidence rule is inapplicable. We do not consider that and other issues which the Whites failed to address in their separate statement. (See *Maryland Casualty Co.* v. Bailey & *Sons, Inc.* ti995) 35 Cal.App.4th 856, 870, fn. 11.)

DISPOSITION

The judgment is affirmed. Security Pacific to recover costs on appeal.

S/HUFFMAN, Acting P.J.

WE CONCUR:

S/NARES, J.

S/ HALLER, J.

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation, Plaintiff, v. RICHARD E. WHITE, et al., Defendants	705440 JUDGEMENT Date: June 13, 1997 Time: 10:00 a.m. Place: Department 44

The Motion of plaintiff, Security Pacific Financial Services, Inc. a California corporation, for Summary Judgement came on for hearing on June 13, 1997, in Department 44 of this court; the Honorable Anthony C. Joseph, Judge presiding; the Law Offices of Paris and Paris appearing on behalf of the plaintiff, and the defendants Richard E. White and Janet White appearing through special counsel, Fox, Johns, Lazar, Pekin, Tredgold & Wexler, and the court, after having considered the evidence, granted the Motion for Summary Judgement and orders the following judgement:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgement be awarded in favor of plaintiff, Security Pacific Financial Services, Inc., a California corporation, against defendants Richard E. White and Janet White, for the principal sum of $78,204.79 with interest in the sum of $20,725.04, court costs pursuant to Memorandum of Costs.

The Clerk is directed to enter this judgement.

DATED: September 26, 1997 S/Anthony C. Joseph

SUPERIOR COURT OF CALIFORNIA COUNTY SAN DIEGO
case no. 705440 clerk Doreen Cadava
date of hearing 05/16/97 time: 02:00 PM Hon. Anthony C. Joseph plaintiff/petitioner defendant /respondent
Security Pacific Financial Service Richard E. White, et al.
Attorney for plaintiff attorney for defendant
Reynold Paris (1) Richard E. White
1. PLAINTIFF TELE: SJ
this matter having come before the court this date, the court orders:

In the matter of Security Pacific Financial Services v. Richard E. White et al., case number 705440, the Honorable Anthony C. Joseph presiding, the court's tentative ruling is as follows:

The motion for summary judgment filed by plaintiff Security Pacific Financial Services, Inc. is granted. Security Pacific has met its burden by producing admissible evidence on each of the laments of the cause of action. (Security Pacific Separate Statement, Undisputed Fact Nos. 7-12.) Defendants' understanding of the meaning of the note is in direct contradiction to the note itself. As a matter of law, defendants cannot defend a claim based on a theory of alleged oral or implied agreement that they would not be personally liable as evidence of such an agreement contradicts the terms of the written agreements and is inadmissible. (Slivinsky v. Watkins Johnson Co. (1990) 221 Cal.App.3d 799, 804-806; Haggard v. Kimberly Quality Care (1995) 39/Cal.App.4th 508,520.) The parol evidence rule therefore, bars their testimony as to the contemporaneous statements of the loan company employees. The fraud exception to the parol evidence rule does not apply as the evidence sought to the express terms of the integrated written agreement. (Bank of America etc. Assn. V. Pendergrass (1935) 4 Cal.2d258; Simmons v. Cal. Institute of Technology (1949) 34 Cal.2d 264, 274-275; cf Continental Airlines, Inc. v. McDonnell Douglass Corp. (1989) 216 Cal. App.3d 388, 418-42; Alling v. Universal Manufacturing Corp. (1992) 5 Cal. App.4th 1412, 1436-1437.)

The tentative ruling shall become the final order of the court nunc pro-tunc, effective on the date the telephonic ruling was issued, in the event (1) oral argument is not requested, or is requested in an untimely manner; or (2) the court confirms the

telephonic ruling after oral argument.

Dated: 05/16/97

Anthony C. Joseph
Judge of the supreme court

EXHIBIT D
DECLARATION OF RICHARD WHITE IN
SUPPORT OF BIAS CLAIM AGAINST
JUSTICES HUFFMAN AND NARES

1. Between 1968 and 1990, I was a breeder and trainer of various zoo animals. During that time I held federal and state permits that were required for the keeping of non-domestic animals.

2. During approximately 1969-1980 I participated in four Walt Disney movies, one Mission Impossible services, and numerous other modeling ad T.V. commercials.

3. My Federal and State permits were identical in nature to those held by the San Diego Zoo.

4. I did not hold a San Diego City, or a San Diego County permit for maintaining zoo animals.

5. The San Diego Zoo is a powerful political influence locally and nationally. They do not hold City or County permits either.

6. In 1968, I was involved in a heated dispute with a county animal regulations officers (ARO's) who threatened to kill all of my animals if I did not obtain a County permit.

7. By about 1970, I began attending various public meeting and ad-hoc committees voicing strong criticism of (ARO's), sheriffs' deputies and the District Attorney.

8. In about 1970, Richard Huffman became District Attorney Miller's chief prosecuting attorney.

9. In 1972, I was arrested by San Diego Police for not having a San Diego Zoo permit. At that time, I think Bill Kollender was Assistant Chief of Police.

10. Believing it was less expensive to pay a $25.00 fine then fight, I paid the fine.

11. I subsequently became involved in an on-going dispute with County Animal Regulation Officers, the Sheriff's Department and the District Attorneys' Office, because I did not have a County Wild Animal Permit.

12. Between approximately 1968 and 1979, I had accumulated several thousand pages of documented evidence alleging corruption between (ARO's) Police, Sheriff Deputies, prostitutes,

drug dealers, organized crime, the Sheriff, and District Attorney.

13. At various times, I submitted those document to the San Diego Police (SDPD), the county Civil Service Commission, (CSC), the County Board of Supervisor (B/S), the County Grand Jury (G/J), the Sheriff (John Duffy), District Attorney (Ed Miller), the California State A/G and the U.S. Attorney General.

14. Miller transmitted all of my documented evidence directly to Huffman.

15. I was coordinating that same evidence with that accumulated by County Superintendent Jack Walsh. Subsequently, Mr. Walsh was under telephone tap surveillance for an undetermined period of time and I was also under visual and telephone tap surveillance for a period of approximately five years.

16. From approximately 1968, and thereafter, I was also critical of the relationship between ARO's; Clyde Hill, the curator of the San Diego Zoo; the Sheriff's Department and the D/A's Office.

17. In 1974, the D/A solicited sworn declarations from, Clyde Hill, who was interested in seeing anyone prosecuted for not having a County permit.

18. In 1974, Huffman was in charge of Deputy District Attorney, Carpenter, who prosecuted me for not having a County Animal Permit. I was found, "not guilty". See Exhibit 1. Much later, Hill was fired by the Zoo.

19. My arrest in 1974, was investigated by the County A/R Department whose Department head was County Veterinarian Hubert C. Johnston and Chief Shelter Superintendent, Russell Schmidt.

20. Between 1974, until about 1978, I was mentioned in approximately two dozen newspaper articles which detailed my complaints alleging corruption between ARO's law enforcement agencies and the DA's Office.

21. In 1976, I became a candidate for the County Board of Supervisors and circulated 40 to 50 thousand pamphlets alleging collusion between organized crime and law enforcement agencies and the DA's Office.

22. Those pamphlets and other documents alleged that ARO's Officers had kept filthy, disease ridden kennels; killed family pets

out of vindictiveness; presented perjured testimony at trial and had stolen valuable animals out of backyards with the intent to sell them privately, or to claim published reward.

23. In mid 1976, Johnston, et. al. sued me, alleging that I attempted to deprive them of their employment, and slander; asking for $800,000.00 in damages.

Johnston and the six ARO's dismissed their lawsuits. Five ARO's were later either demoted, fired, or transferred. One ARP committed suicide. Johnston, who had a staff of 86, had his salary reduced $15,000.00 per year. He was removed as chief of Animal Control, with a reduced staff of only four.

24. In those pamphlet, I had also alleged an illicit relationship between the Sheriff's vice officer, Randall Anderson and a prostitute/drug dealer named Betty Jean Tucker Drayner, D/A prosecutors and two county judges, namely Raul Rosado and Earl Gilliam.

25. During the same time frame., I also compliance that the Sheriff and D/A had been in collusion to cover up the killing of one Michael G. Nolan who was beaten to death with a flashlight by Deputy "Billy" Cowles.

The sheriff and the D/A insisted that Nolan had died because he bumped his head on a pool table.

26. In 1975, Superintendent Jack Walsh and I initiated a G/J investigation in to the death of Michael G. Nolan.

27. Prior to the G/J hearings re: Nolan, Huffman subpoenaed Nolan's treating physician and gave him a false impression of the way Nolan was injured as well as his subsequent treatment while in the care of the deputies.

28. Despite the doctor's tainted testimony, the G/J prepared a scathing report on the Nolan case blaming Deputies Cowles and Meyers as to the cause of Nolan's death. Huffman argued intensely with the G/J foreman to "tone down" his public report.

29. Cowles and Meyers subsequently sued me for "attempting to deprive them of their employment and "slander" claiming a total of $1,200,000.00 in damages.

30. The sheriff and D/A witnesses appeared on behalf of the Deputies; forcefully asserting that Nolan had died because he had bumped his head on a pool table. They had destroyed Cowles boots because, they claimed, they had blood on them from an

accidental kicking and that this was not important. His bloody shirt was dry cleaned. His flashlight was substituted, at trial, with another one that was not presented to the G/J hearing.

At trial, Nolan's doctor testified that Huffman had lied to him, and that because he had treated over 1,000 police inflicted head wound cases, he believed that Nolan had been beaten to death by Cowles flashlight. The jury awarded Cowles and Meyers each $1,000 in punitive damages plus attorneys; fees. They were never prosecuted. Two subsequent civil lawsuits resulted in judgments against them.

31. The matter : Cowles and Johnston, et. al. was scheduled to be heard before the County C/S/C in 1975.

32. Ed Miller was D/A from 1970 for approximately 20 years, thereafter, he was instrumental in getting C. Hugh Freedman appointed as chairman of the C/S/C.

33. Freidman had currently been under investigation in a $51,000,000.00 U.S. National Bank swindle. See Exhibit 2.

34. At the same time, C. Arnholt Smith and the Alessio Family was also involved in a U.S. National Bank swindle in which Friedman was Alessio's attorney.

35. Miller subsequently warned Freidman not to pursue the matters that I had submitted to the C/S/C. See Exhibit 3.

36. Freidman subsequently refused to hear the cases of Cowels or Johnston.

37. Freidman and his law firm settled their lawsuit and were forced to close down their firm.

38. . The Alessio's had been a close personal friend to Bill Kollender for over 20 years and Huffman was a good friend of Kollender.

39. Freidman and the Alessio's were never prosecuted in the bank swindle case.

40. Friedman was subsequently appointed to head the State Securities Commission in order to regulate corporate law. See Exhibit 4.

41. Two days after Miller sent Friedman the warning not to hear my case, the Chief of A/R, Schmidt resigned because of his dispute with me. Please refer to Exhibit 5.

42. In 1976, I had complained to the Board of Supervisors (B/S) and the G/J that Russell Lee Chamberlain was strangled to

death with a towel by two deputies and other officers in County Jail after provoking him into a fight.

The sheriff and D/A had claimed that he had chocked to death on his own vomit. County Supervisor, Lee Taylor, sent my complaint to the U.S. Attorney; they did nothing. The G/J investigated and confirmed my findings. Please refer to Exhibit 6.

43. County Supervisor, Jack Walsh and I also initiated a G/J investigation into the county jails. We claimed that Duffy was fundamentally allowing a "goon squad" to operate with impunity.

44. The sheriff, D/A the State A/G all claimed that our charges were ridiculous. The G/J issued another scathing report on the jails.

45. Several years later, a minister was severely beaten by deputies at the County Jail. He sued alleging that the jail had a "goon squad"; he recovered a multi-million dollar judgment.

46. In mid 1976, County Supervisor, Jack Walsh and I initiated a G/J investigation of organized crime and it's dealings with the sheriff's department and the D/A. Huffman was placed in charge of the "investigation". Please refer to Exhibit 7.

47. Supervisor Walsh and I had alleged a corrupt alliance between mobsters who had left Chicago and Kansas City in order to build and manage the La Costa Country Club. Walsh had information that La Costa was flying plane loads of prostitutes in from Las Vegas casinos.

He believed that Sheriff Duffy had a free membership; Huffman was Duffy's personal guest and there was evidence that Duffy had received cash bribes, to which Anderson was a witness.

48. Ex-sheriff's detective, Neil Travers was subpoenaed by Huffman as a peripheral witness to the involvement of Anderson and the bribe charges. Travers had been hired by my insurance Company to investigate Anderson.

After Travers testified, Huffman called a press conference, claiming that they intended to prosecute Travers for perjury and obstruction of justice.

49. Travers subsequently hired a polygraph examiner which showed that he had told the truth. Huffman did not proceed further.

50. La Costa was built through the efforts of mobsters, "Moe"

Dalitz (Purple Gang, Chicago and Kansas City); Meyer Lansky; "IRV" Rosten, Merv Adelson and others.

Adelson was to be the future husband of news anchor woman, Barbara Walters.

51. As a separate allegation to the G/J, I had alleged an illicit relationship between Kollender, Duffy, the D/A and the Alessio Family, who had four houses of prostitution, under leases on their properties, but they had never been prosecuted.

Also alleged was, that various law enforcement officers and two judges, namely Raul Rosado and Earl Gilliam, were being serviced by prostitutes.

At the G/J hearings, Huffman did not call Duffy, Kollender, Dalitz, Lansky, Adelson, the Alessios', Judge Rosado, Judge Gilliam or any of the many reputed teamster mobsters who were connected to La Costa.

51. Duffy had previously traveled to Los Angeles to testify in a libel and slander lawsuit in which "Moe" Dalitz was plaintiff. Duffy testified as to Dalitz "good character".

52. Prior to 1976, the Alessio's had served time in prison for race track skimming and tax evasion. While in prison they had bribed prison officials to bring in prostitutes to have sex with themin the prison chapel.

For this they were convicted on these additional charges and served more time.

53. The New Mexico Attorney General subsequently commenced a second investigation into allegations that their race track business was the center of murder, drugs, prostitution, bribery, and extortion; the results of that investigation are presently unknown.

54. After Huffman's G/J "investigation" of organized crime concluded in 1976, the New Mexico Racing Commission resumed hearings of possible improprieties by the Alessio race track industry. The hearings were then temporarily recessed in January 1977. See Exhibit 8.

55. Two months after I had been found "not guilty" for not having a County Permit in August 1984, Huffman issued two criminal complaints against Maxey Roamaine on October 13, 1974 and December 27, 1974. The complaint alleged that Romaine had solicited Betty Tucker (Drayner) and Judy Powers to work in a

house of prostitution and that Romaine was in possession of stolen property along with carrying a blackjack. Please refer to Exhibit 9.

56. Huffman subsequently prepared a search warrant which was served on the "mans' World Massage Parlor," by Randall Anderson. Said establishment was owned by Romaine. Please refer to Exhibit 10.

57. At Romaines's trial, Draynor testified that, when Romaine had been arrested, she had been paid $125.00 for consensual sex.

58. In May 1975, Drayner was nearly pistor-whipped to death by Deputy Batcher who refused to pay her $25.00 for oral and vaginal sex. Her scalp was severely lacerated and had multiple skull fractures. She was hospitalized in a coma which lasted for several days.

59. Drayner was interviewed in the hospital by a reporter shortly after her beating at which time she stated she was going to sue. See Exhibit 11.

60. Drayner subsequently sued Bacher and the Sheriff's Department for failing to provide her "protection" as an informant.

61. Drayner had been a prostitute /drug dealer since approximately 1974. She was a business partner with her mother in a massage parlor and a Laundromat. She had been previously been married to a gay Vietnam veteran with whom she became embroiled in a bitter child custody battle.

62. Drayner remarried an ex-green beret who also dealt in drugs, explosives and machine guns.

63. During Draynor's custody battle, in mid 1976, her exhusband was shot in the face by a shot gun blast through his living room window and was thereafter permanently blinded.

64. The D/A's office appeared in Court on behalf of Drayner and subsequently won custody of her children.

65. Shortly after Drayner came out of her coma, she was personally interviewed by both Huffman and Deputy Anderson.

66. Drayner informed Huffman and Anderson that she was a working prostitute servicing deputies, yet she was never arrested.

67. Linae King and Linda Smith were both prostitutes employed by Drayner. Huffman interrogated King and Smith before the G/J on May 22, 1975.

68. King admitted that she was a working prostitute for Drayner and had made the same admission to Vice Deputy Marshall Kelsey. Huffman also examined Detective Thomas Steed who testifies that he and Anderson had both interviewed Draynor in the hospital. Please refer to Exhibit 12.

69. In order for Drayner to obtain a license to operate a massage parlor, she could not have a history of prostitution and her application had to be approved by both the sheriff and the D/A.

70. The fundamental operation of Tucker involved sending her prostitutes to work in competing massage parlors in order to get the parlor owners arrested so that they would be put out of business.

She and her girls were having sex with vice cops, police, prosecutor and judges who would later prosecute and hear the cases of the competitors she was trying to put out of business.

As a perk to the law enforcement, the vice cops put the parlors under surveillance in order to conduct counter intelligence activities of businessmen, judges and politicians who's license plate numbers were recorded and identified.

71. Drayner was reissued a license on February 9, 1976. See Exhibit 13.

72. In mid 1976, Anderson sued me for slander because I had claimed that he had illicit relationships with Drayner and other prostitutes.

73. On May 10, 1976, Anderson engaged in oral sex with a prostitute known as Janet Lee Grey. He refused to pay and arrested her. The D/A dismissed the charges against Grey because Anderson was an "accomplice" and because they were two consenting adults. See Exhibit 14.

74. By July 1977, Drayner had been a working prostitute and drug dealer for four years. She had never been arrested. Trial in Anderson vs. White was eminent. Both Drayner and her mother were to be called as hostile witnesses in my defense.

75. On May 5, 1977, Drayner was reissued her massage parlor license. See Exhibit 15.

76. On July 6, 1977, Anderson and his "vice Partner", Joe

Krass, arrested Drayner for possession of drugs. See Exhibit 16.

77. On August 4, 1977, the D/A filed a compliant against Drayner and Christie Lyn Hunter for prostitution, drugs and concealed weapons charges. See Exhibit 17.

Ex-Sheriff's detective, Neil Travers, was employed by my insurance company to investigate Anderson.

79. On September 29, 1976, Neil Travers obtained a declaration from Sandra Lee Thompson, who was offered a "protection" scheme by Anderson but when she became fearful of her safety and complained to the D/A, she was threatened and arrested. See Exhibit 18.

80. On January 16, 1978, Deputy D/A William Howett, who is now a sitting judge, and was endorsed by Miller, Howett dismissed the charges against Dreyner and Hunter, "in the furtherance of Justice". See Exhibit 19.

81. Subsequent to January 16, 1978, HUFFMAN solicited a DEA agent to meet with Drayner and her husband, Eric, who posed as a Chicago "hit man". The "hit Man" introduced himself to the Drayners; and then proposed to beat up two of Drayner's former employees, namely "Cat" (Katheryn and Chirstie Lyn Hunter) for their alleged theft and double crossing Drayner. This was to be done merely as a favor in order to gain the trust of the Drayner's so that they would modify two semi-automatic rifles into sub-machine guns.

The two sub-machine guns were to be exchanged for giving the Drayner's a bomb to blow up an airline passenger plane that Anderson and his partner, Joe Maes, would be flying on to Los Angeles.

As an added free bonus, the "hit man" was also to make a bomb for the Dreyner's to blow up a competing Laundromat known as "Cory's" in the Hillcrest area.

The "hit man" and the D/A arranged for an apartment to be rented in the Clairemont area; arranged for and then hired a professional make-up artist and photographer. Photos of Hunter were then taken, which showed her in a contorted, injured, "bloody" condition.

The "hit man" subsequently showed the photos to the Drayner's and made the Laundromat bomb for them. They took the bomb and blew up the Laundromat.

After the Laundromat was blown up, the "hit man" delivered the second bomb and then collected the modified sub-machine guns. He had supplied the semi-automatic weapons to them in the first place. The Drayner's house had been completely surround by S/D police, sheriff's deputies, DEA agents and ARO's who immediately arrested them.

They were arrested for illegal possession of a snake, bombing the Laundromat; possession of drugs; attempted murder and possession of the machine guns. They were arrested on March 10, 1977. See Exhibit 20.

82. On March 20, 1977, Travers interviewed Drayner at Las Colinas jail; their conversation was being secretly monitored by prison deputies on tape. Drayner admitted receiving "protection" from Anderson in the form of immunity from prosecution, guaranteed licensing and false identities. See Exhibit 21.

83. On May 9, 1978, Drayner's mother, Betty Brown gave Travers a declaration stating that Anderson was giving "protection" to her massage parlor business and the girls working for her. See Exhibit 22.

84. On August 28, 1978, the Draynor's pleaded guilty to bombing the Laundromat and other charges. A notice of appeal was then filed by the Drayner's.

The Drayner's were then released after posting bail bonds of $20,000.00 each. The Drayner's sentencing judge was one of her alleged customers, namely Earl Gilliam. See Exhibit 23.

85. Subsequent to Drayner's guilty pleas on August 28, 1978, she was issued another license by the San Diego Police. She operated with immunity for approximately 10 months, until she was arrested again on about May 27, 1977, for prostitution and dealing in heroin. She posted a $5,500.00 bail bond and was released when her guilty pleas to bombing, drugs and machine guns was still on appeal.

The San Diego police had been "investigating" Draynor for three months before she was arrested. See Exhibit 24.

86. By comparison, the so-called "Roledex Madam" was investigated by San Diego Police, DEA agents, the sheriff, and the

D/A; her bail bond was set at $4,000,000.00. She never dealt in drugs, blew up anything, had no drugs or machine guns and never tried to kill anyone.

Her most serious crime was trying to avoid being prosecuted for prostitution, and was suspected of providing a prostitute for the chief of police, Kollender.

87. Draynor continued to remain free on bail, for a total of 27 months, until the pending slander lawsuit of Anderson vs. White was to be tried in August of 1979. Anderson had sued me for approximately $350,000.00 claiming defamation of character.

88. At the trial of Anderson vs. White, a prostitute testified that she had sex with Anderson. Another prostitute who had had sex with Anderson was in jail in Las Vegas and was therefore unable to testify.

Anderson admitted that he had had 200 or 300 nude massages and his sexual interlude with Janet Grey. The jury tossed a coin, took averages and awarded him approximately $2900.00 in damages plus attorneys; fees.

Betty Jean Drayner had testified that Anderson was a "perfect officer". Anderson's wife, who knew the truth, attended the trial every day and later divorced him.

We were unable to locate the third prostitute who had had sex with Anderson's partner, Detective Kelsey, and claimed that he had "weird sex habits".

We were also unable to locate another prostitute associate of Drayner's who claimed that Deputy D/A "Beanie" Revak had an unusual interest in her.

Deputy D/A Rinston Maino was a close associate of Revak, who along with Huffman, testified on behalf of Anderson as to his credibility and impeccable character. Huffman, Revak and Maino all received judgeships upon the recommendation of D/A Miller.

89. After the Anderson vs. White trial, Drayner and her husband remained free until February 15, 1980, a total of 32 months at which time they were sentenced to five years by Judge Gilliam. Alternatively, they were ordered for psychiatric evaluations based upon the D/A's recommendation. They were subject to reconsideration of sentence. See Exhibit 25. The results of the "reconsideration" are yet unknown.

90. After the firing of Hubert Johnson, he was succeeded by Encil Rains, as chief of Animal Control. Rains had been fired from his job in Queens, New York as president of the Humane Society because of an accounting discrepancy and embezzlement of funds.

91. Rains and Deputy D/A William Howett had me arrested a second time for not having a county permit and "illegal possession of wolves". The D/A subsequently issued a search warrant authorizing ARO's and deputies to break into my house through a rear window under the pretense of searching for evidence of "illegal wolf" possession. The wolves were housed in back yard caging. The California Department of Fish and Game had previously paid me to board and feed a male and female pair of Canadian wolves.

While there with the warrant, various tax records, etc. were stolen. When I complained, I was interviewed by a Sheriff's detective who carried a "hidden wire". The wold charges were later dismissed by the Court.

92. About October 2, 1977, I had reason to believe that unknown persons had caused on e of my animals to escape. I was then arrested again for not having a county permit and not having adequate caging.

93. Prior to trial re: Anderson vs. White, Walsh had made it known that he was going to nominate me for chairman of the Citizens' Watchdog Panel to investigate citizen complaints. Duffy and Miller filed a lawsuit to prevent any of the panel's investigation of Sheriff or D/A complaints. See Exhibit 26.

94. The "investigation" of the caging and "no permit" case was ordered by Daniel Kremer, who subsequently received a judgeship upon the recommendation of Miller. Kremer is now a presiding Justice of the Appellate Court. See Exhibit 27.

95. With the concurrence of Huffman, Kremer selected Deputy A/G Gary Schons, (a reputed master of cover up) to prosecute the "illegal wolf", "no permit" and "escape" cases.

96. Huffman, Howett and Schons subsequently initiated a pre-trial motion in order to determine my "mental competency" and commitment to an asylum.

Prior to the hearing, Huffman and Howett had transmitted my entire complaint file to Kremer and Schons, who used

carefully selected portions of my declarations, as grounds for their motion. See Exhibit 28..

97. Concurrent with the D/A and Schons attempt to have me found mentally incompetent, Schons and the D/A unsuccessfully attempted to commit Davone Terril, a co-defendant in the case of Cowels vs. White.

98. Despite having all my files and evidence re: Jonston Cowels and Anderson, no one connected with the sheriff, D/A or A/G ever interrogated a single adverse witness who was related to any of those cases. They did not have a single shred of evidence to support their "mental incompetency" motion.

99. In 1994, Deputy D/A Keith Burt, while under the supervision of D/A Miller, tried the now infamous Jerry Hartless murder case.

Prior to the trial, Burt and his fellow prosecutors arranged for one Darin Palmer, their star witness, to have frequent sexual encounters in the D/A's offices.

Palmer was a "jailhouse snitch" who was werving time in County jail on unrelated charges. Burt was specifically asked by the court if Palmer had received any special treatment in exchange for his prized testimony for the prosecution.

Burt denied the defenses allegations despite the fact that Palmer had taken numerous nude photographs of himself and a female, with a camera that was lying on the prosecutor's desk.

Deputy A/G Schons, who by now, had whitewashed numerous other cases for the D/A, claimed that there were absolutely no improprieties on behalf of the D/A's office until a story later broke in the San Diego Union Tribune. Burt and Schons were later forced to admit the existence of Palmer's nude photographs. See Exhibit 29.

100. This story of collusion and falsification of evidence has received widespread publicity over the past several years, and so the official findings of Schons are routinely refuted. Even so, Schons has been routinely sought after by various prosecutors for his "special talents." He and his fellow conspirators have never been prosecuted.

101. My pleadings in D020483 have made numerous and frequent references to collusion between Anderson, Huffman, Drayner and Schons. Therefore, I have every reason to believe

that Justice Nares had good cause to believe that Huffman was untruthful and biased when he claimed that he had absolutely no recollection of any circumstances related to me or Betty Jean Tucker Drayner.

102. For all of the above reasons, I also believe that Justice Mares has a bias against me.

I declare under penalty of perjury that the foregoing is true and correct according to the laws of the State of California, and that if called as a witness, I could competently testify to the truth thereof. Executed this fourth day of May, 1999 at El Cajon, California.

_____

Richard White

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PARIS AND PARIS
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Santa Monica, California 90405-1197

(310) 392-8722

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation, Plaintiff, vs RICHARD E. WHITE aka RICHARD WHITE, JANET B. WHITE aka JANET WHITE, DOES ONE TO TEN, both inclusive, Defendants.	No. 00705440 COMPLAINT Promissory Note

PLAINTIFF COMPLAINS AND ALLEGES THAT:

1. The true names of Defendants, Does One to Ten, both inclusive, are unknown to plaintiff and they are therefore sued herein under the foregoing names, which are fictitious, and upon ascertaining their true names, leave will be asked to amend this complaint by inserting the same.

2. At all times herein mentioned plaintiff was, and now is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, qualified to carry on business in the State of California in compliance with the California Finance Lenders Law.

3. That on or about October 28, 1993 in the city of San Diego, State of California for valuable consideration, defendants, and each of them, made, executed and delivered to plaintiff their promissory note in writing, bearing date on that date. On December 30, 1994, said defendants entered into a written modification agreement wherein defendants promised to pay the sum of $78,333.79 in monthly installments of $1,043.40 each, commencing January 30, 1995 with interest and charges thereon at the rate of 15.55% per annum.

4. That said note provides that should default be made in the payment of any one installment when due, the entire unpaid balance may be declared immediately due and payable at the option of the holder; that the defendants have defaulted in making the payments as agree, paying only the sum of $129.00 on the principal amount due thereon, and by reason thereof, the entire unpaid balance of said note has been declared due and payable; that despite the fact that demand has been made upon defendants, and each of them, for the balance due on said note, no part thereof has been paid, and there is now due, owing and unpaid from defendants, and each of them, the sum of $78,204.79 since September 28, 1995.

5. That said promissory note was executed and made payable in the County of San Diego, State of California.

6. That the payment of said promissory note is secured by a written deed of trust on certain real property; that plaintiff's security interest in the real property has been rendered valueless by virtue of a foreclosure proceeding by a senior lienholder.

7. Said promissory note provides that in the event suit is commenced to enforce payment thereof, defendants would pay a reasonable sum for attorneys fees; that the sum of $2,454.00 is a reasonable sum as and for attorneys fees in the event this matter proceeds as a default. If this case is contested plaintiff hereby requests the court to award plaintiff such additional fees as may appear reasonable to the court.

WHEREFORE, plaintiff prays judgment against the defendants, and each of them, for the sum of $78,204.79 with interest thereon at the rate of 15.55% per annum from September 28, 1995 plus attorneys fees in the sum of $2,454.00 in the event this matter proceeds as a default or such additional sum as to the court seems reasonable in the event the matter is contested; for costs of suit and such and other and further relief as to the court seems just and proper.

PARIS AND PARIS

BY _____
Attorneys for Plaintiff

Richard E. White
Janet B. White
9856 Eucalyptus Street
Spring Valley, California 91977
(619)697-1200

FILED:
96 DEC 20 PM 3:04

Defendants in Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL) SERVICES, INC., a corporation,) Plaintiff, vs. RICHARD E. WHITE aka RICHARD WHITE, JANET B. WHITE, aka JANET WHITE, DOES ONE TO TEN, both inclusive, Defendants.	Case No. 00705440 ANSWER TO COMPLAINT FOR MONEY

Defendants, RICHARD E. WHITE and JANET B. WHITE, submit their Answer as follows:

1. Admit each and every allegation contained in paragraphs 3 and 5 of the Complaint.

2. Deny on lack of information and belief each and every allegation contained in paragraphs 1, 2, and 4 of the Complaint.

3. In answering paragraph 6 of the Complaint herein, defendants admit that the promissory note was secured by a written Deed of Trust; but deny that plaintiffs; security interest

was made valueless by virtue of a foreclosure proceeding.

4. Defendants admit paragraph 7 that states there is a provision for attorney fees, but deny that $2,454 is a reasonable fee n this proceeding. Defendants also deny that $78,204.79 is now due and owing, plus interest on that amount from September 28, 1995.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state facts sufficient to constitute a cause of action against these answering defendants.

2. The Note should be rescinded or cancelled in its entirety because it was created through the fraud of plaintiff in the following respect; to wit:

a. Plaintiffs misrepresented to defendants that they could proceed with further legal action if property was foreclosed upon.

3. The Note in question should be rescinded/cancelled because of a mutual mistake of fact concerning the amount remaining due to plaintiff because plaintiff failed to defend their equity position at foreclosure sale.

4. Plaintiff's attorney fees have not only been unreasonably calculated, but those fees should not have been applied to this action.

WHEREFORE, defendants pray judgment as follows:

1. That plaintiff take nothing by their Complaint herein:

2. That defendants be awarded their attorney's fees pursuant to Civil Code Section 1717:

3. For costs of suit herein incurred; and

4. For such other and further relief as the Court deems just and proper.

Dated: December 19, 1996.

_____

Richard E. White, Defendant, in propria persona

_____

Janet B. White, Defendant, in propria persona

JEFFREY A. PARIS, State Bar No. 113527
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Attorneys for Plaintiff

FILED:
97 MAR 25
AM 9:54

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation,	No. 00705440
	NOTICE OF MOTION AND MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT;
vs.	MEMORANDUM OF POINTS AND
RICHARD E. WHITE, et al.,	AUTHORITIES; DECLARATION OF DAVE TORLONE IN SUPPORT THEREOF; SEPARATE STATEMENT OF UNDISPUTED FACTS
	DATE: May 16, 1997
	TIME: 2:00p.m.
	PLACE: Department 44
	DISCOVERY CUT-OFF: NONE SET
	MOTION CUT-OFF:

	)	NONE SET
Defendants.	)	TRIAL DATE: NONE
	)	SET
	)	

TO RICHARD E. WHITE and JANET B. WHITE, DEFENDANTS, IN PRO PER:

PLEASE TAKE NOTICE that the Motion of Plaintiff, Security Pacific Financial Services, Inc., for Summary Judgment on its complaint will be heard on May 16, 1997, at 2:00p.m., in Department 44 of this court, located at 220 West Broadway, San Diego, California 92101.

This motion will be based upon the grounds that there is no defense to plaintiff's single cause of action complaint for breach of promissory note, and that judgment should be entered for plaintiff Security Pacific Financial Services, Inc., and against Richard E. White and Janet B. White.

The motion is based upon this notice, the attached Memorandum of Points and Authorities, the Declaration of Dave Torlone, the Separate Statement of Undisputed Facts filed concurrently herewith, all matters on file herein, matters upon which judicial notice can be taken, and any evidence, oral or written which may be introduced at the hearing.

DATED: Mach 20, 1997

PARIS AND PARIS

BY_____

Attorneys for Plaintiff

JEFFREY A. PARIS, State Bar No. 113527
J. ROBERT FORCE, State Bar No. 154778
PARIS AND PARIS
Paris Law Building
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(310) 392-8722

Attorneys for Plaintiff

FILED:
MAR 25 1997

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation, Plaintiff, vs. RICHARD E. WHITE, et al., Defendants.	No. 00705440 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT DATE: May 16, 1997 TIME: 2:00p.m. PLACE: Department 44 DISCOVERY CUT-OFF: NONE SET MOTION CUT-OFF: NONE SET TRIAL DATE: NONE SET

COMES NOW, the plaintiff Security Pacific Financial Services, Inc., in the above-captioned case and submits this Memorandum of Points and Authorities in support of plaintiff's Motion for Summary of Judgment.

I

FACTUAL BACKGROUND

On or about October 28, 1993 at El Cajon, California, defendants for valuable consideration made, executed and delivered to Security Pacific Financial Services, Inc., a promissory note payable to Security Pacific Financial Services, Ins. Said note was modified on December 30, 1994 wherein defendants promised to pay the principal sum of $78,333.79. The note provides for interest at the rate of 15.55% per annum. Monthly payments of the principal and interest in the amount of $1,043.40 were due under the note beginning January 30, 1995. A true and correct photocopy of the note is attached to the declaration of Dave Torlone as Exhibit "B".

The note was secured by a second deed of trust conveying certain property therein described to S P Escrow Services, Inc., a California corporation, as trustee for Security Pacific Financial Services, Inc., as beneficiary to secure repayment of the note. A true and correct copy of the deed of trust is attached to the Declaration of Dave Torlone, as Exhibit "C" and is incorporated herein by reference.

The deed of trust, attached as Exhibit "C", was subject to a senior deed of trust encumbering the property, recorded with the Official Records of San Diego County.

After giving notice of default and notice of sale as required by law, the senior lienholder proceeded on April 8, 1996 to foreclose the senior trust deed under a power of sale included therein and sold the property at public auction. No portion of the proceeds of the sale remained to be applied on the note after deducting the amount due the senior trust deed and expenses of the sale. See declaration of Dave Torlone.

As a result of the sale of the property by foreclosure of the senior trust deed, the security for the note has become exhausted and worthless without any act on the part of plaintiff.

The proceeds from plaintiff's note were not used for the purchase price for the property. See Declaration of Dave Torlone.

Defendants have defaulted on the note, as defendants did not make the payment due on September 28, 1995 and have made no payments since that time. Defendants currently owe the principal sum of $78,204.79 plus interest at the rate of 15.55% per annum from September 28, 1995 through April 1, 1997 in the amount of $18,325.04 plus the per diem rate of $33.32. A true and correct photocopy of the account ledger is attached to the declaration of Dave Torlone as Exhibit "D" and incorporated herein by reference.

Pursuant to the terms of the note and the default of defendant thereunder plaintiff has declared the entire unpaid balance and the whole thereof, together with interest thereon due, owing and unpaid from defendants to plaintiff.

The note provides that defendants will pay all reasonable attorneys' fees if defendants default on the note. See paragraph 6(e) of the note.

LAW AND MOTION

STATUTORY AUTHORITY FOR SUMMARY JUDGMENT

The plaintiff brings this motion for summary judgment as it is entitled to judgment on its claim as a matter of law.

Summary judgment procedure is drastic and should be used with caution so that it does not become a substitute for trial. Gray v. Reaves, 76 Cal.App.3d 567, 142 Cal.Rptr. 716 (1977); Barco-Prudent, Inc. V. Hampshire Construction Co., 50 Cal.App.3d 64, 1213 Cal.Rptr. 606 (1975). However, if from all of the papers submitted, there exists no triable issue of any material fact, then the moving party is entitled to judgment as a matter of law. California Civil Procedure Code Section 437c(c).

The plaintiff has met its burden of showing there are no triable issues of any material fact and there is no defense to a cause of action if it can prove each element of the cause of action entitling it to judgment on that cause of action. Once the plaintiff has met that burden, the burden shifts to the defendant to show that triable issue of fact exists as to the cause of action or a defense thereto. California Civil Procedure Code Section 473c(o)(1).

In the case before this court, plaintiff is entitled to judgment against defendants on the note which is the subject of this action as there are no material issues of fact as to the liability of defendants.

THE COURT SHOULD GRANT PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS THERE ARE NO DISPUTED ISSUES OF MATERIAL FACT IN THAT THE DEFENDANTS ARE OBLIGATED TO PAY ON THE NOTE. THEY HAVE DEFAULTED ON THAT OBLIGATION

AND ARE LIABLE TO THE PLAINTIFF AS A MATTER OF LAW

"Ordinarily, one who accepts or signs an instrument, which on its face is a contract, is deemed to assent to all its terms, and cannot escape liability on the ground that he has not read it. If he cannot read, he should have it read or explained to him.: Witkin, Summary of California Law Contract, (9th ed. 1987) Sec. 120, p. 145. See Greve v. Taft Realty Co. (1929) 101C.A. 343, 351,281 P. 641; Security National Trust & Savings Bank v. Loftus, (1933) 129 C.A. 650, 654, 19 P.2d 297.

This case is very simple. It involves the failure of defendants to pay on a promissory note. In order for plaintiff to enforce the obligation which is the subject of this action, plaintiff must simply demonstrate that (1) plaintiff is holder of the note; (2) the note was executed by the defendants; (3) the defendants defaulted on the obligation owing under the note, and(4) the specific amount due and owing to the plaintiff by defendants, including interest and attorneys fees.

THERE IS NO DISPUTE OF ANY MATERIAL ISSUE OF FACT THAT PLAINTIFF IS THE HOLDER AND OWNER OF THE NOTE

Plaintiff is the original holder of the note. As a matter of law, plaintiff is the holder of the note and has the right to enforce payment of the terms of the note and its modification. See declaration of Dave Torlone and Exhibits "A" and "B" attached thereto.

THERE IS NO DISPUTE OF ANY MATERIAL ISSUE OF FACT THAT THE DEFENDANT EXECUTED THE NOTE AND IS OBLIGATED BY THE TERMS AND CONDITIONS OF THE NOTE

Under the Uniform Commercial Code adopted by

California, signatures are presumed valid unless specifically denied in the pleadings. California Commercial Code Section 3308(a). Since defendants have not specifically denied the signatures in the pleadings, the signatures are presumed valid. Under California Commercial Code Section 3308(b), in the event that a signature is admitted or proved, plaintiff is entitled to payment if it can demonstrate a right to enforce payment and the defendant cannot prove an enforceable defense to payment, as is the case here.

THERE IS NO DISPUTE OF ANY MATERIAL ISSUE OF FACT THAT PLAINTIFF IS ENTITLED TO ENFORCE PAYMENT AS THE DEFENDANTS DEFAULTED ON THE ORIGINAL NOTE AND THE TOTAL AMOUNT IS CURRENTLY DUE AND PAYABLE TO PLAINTIFF

The defendants failed to make the payment due September 28, 1995 and have failed to make any payment thereafter. See declaration of Dave Torlone and Exhibit "D" attached thereto.

By the provisions of Section 6(b) and © of the note, failure to make a payment when due constitutes default and grants to the holder the right to accelerate the note and make the entire balance due and payable. As holder, plaintiff is entitled to enforce the terms of the note and receive payment which is now due.

THERE IS NO DISPUTE OF ANY MATERIAL ISSUE OF FACT AS TO THE AMOUNT OF MONEY DUE FROM THE DEFENDANTS TO PLAINTIFF ON THE NOTE

The principal balance due on the note is the amount of $78,204.79 plus interest thereon at the rate of 15.55%. The interest due on the unpaid principal amount is a sum certain and calculable from the note itself. Interest is due from September 28, 1995 through April 1, 1997, in the amount of $18,325.04 and interest continues to accrue at the per diem rate of $33.32. See declaration of Dave Torlone and Exhibit "D" attached thereto. Further, by the terms of Section 6(e) of the note, the defendants are obligated to pay attorneys; fees to the holder of the note incurred in the collection of the note. Plaintiff's request for $2,454.00 in attorneys; fees is reasonable pursuant to Local Rules default schedule.

Plaintiff's motion for summary judgment should be granted as there is no dispute of any material issues of fact as defendants are obligated to pay on the note, they are in default thereon, and they are liable to plaintiff for its damages as a matter of law.

THE COURT SHOULD GRANT SUMMARY JUDGMENT AGAINST THE DEFENDANT. AS THERE ARE NO ISSUES OF MATERIAL FACT AS TO DEFENDANTS LIABILITY

As discussed at length above, plaintiff has met its burden of proof showing that there is no defense to a cause of action since plaintiff has proved each element of its claim for money due on promissory note, thus entitling plaintiff to judgment. Accordingly, summary judgment is proper against defendants.

CONCLUSION

Based on the facts and law and the application of law and fact cited above, plaintiff respectfully requests that this court grant its motion for summary judgment against the defendants and enter judgment in the amounts due based on the evidence presented.

DATED: March 20, 1997

PARIS AND PARIS

By_____

Attorneys for Plaintiff

JEFFREY A. PARIS, State Bar No. 113527
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Attorneys for Plaintiff

FILED:
MAR 25 1997

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation, Plaintiff, vs. RICHARD E. WHITE, et al., Defendants.	No. 00705440 DECLARATION OF DAVE TORLONE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT DATE: May 16, 1997 TIME: 2:00p.m. PLACE: Department 44 DISCOVERY CUT-OFF: NONE SET MOTION CUT-OFF: NONE SET TRIAL DATE: NONE SET

STATE OF CALIFORNIA)

)ss
COUNTY OF SAN DIEGO)

The undersigned declares:

1. That he is employed by Security Pacific Financial Services, Inc., as a collection officer. If called upon to testify as to the matters set forth in this declaration, he could and would competently testify thereto, as the facts set forth herein are personally known by him to be true.

2. He is one of the custodians of the books, records and files of Security Pacific Financial Services, Inc., as the books, records and files relate to a loan and credit extended to the defendants Richard E. White and Janet B. White and the circumstances surrounding same. He has personally worked on said books, records and files, and as to the following facts, knows them to be true of his own personal knowledge or has gained such knowledge of them from the business records of Security Pacific Financial Services, Inc., which are made at or about the time of the events recorded and which are maintained in the ordinary causes of business of Security Pacific Financial Services, Inc.

3. The business records of Security Pacific Financial Services, Inc., are carefully prepared to reflect all acts, conditions and events at or near the time said acts, conditions or events occurred. Declarant is familiar with the methods and procedures of compiling and maintaining the data concerning the loans and extensions of credit. He personally knows said methods and procedures are reliable and accurate.

4. On or about October 28, 1993 at El Cajon, California, defendants for valuable consideration, made executed and delivered to Security Pacific Financial Services, Ins., a promissory note payable to Security Pacific Financial Services, Inc. Said note was modified on December 30, 1994 wherein defendants promised to pay the principal sum of $78,333.79. The modification of the note provides for interest at the rate of 15.55% per annum. Monthly payments of the principal and interest in the amount of $1,043.44 were due under the note beginning on January 30, 1995. A true and correct photocopy of the note is attached hereto as Exhibit "A" and made a part hereof. A true and correct copy of the modification is attached hereto as Exhibit "B" and made a part hereof.

5. The note and modification thereof were secured by a third deed of trust, conveying certain property therein described to SP Escrow Services, Inc.. a California corporation, as trustee for Security Pacific Financial Services, Inc., as beneficiary to secure repayment of the note. A true and correct copy of said deed of trust is attached hereto as Exhibit "C" and is incorporated herein by reference.

6. The deed of trust attached as Exhibit "C" was subject to a senior deed of trust encumbering the property, recorded with the Official Records of San Diego County.

7. After giving notice of default and notice of sale as required by law, the senior lienholder proceeded on April 8, 1996 to foreclose the senior trust deed under a power of sale included therein and sold the property at public auction. No portion of the proceeds of the sale remained to be applied on the note after deducting the amount due the senior trust deed and expenses of the sale.

8. As a result of the sale of the property by foreclosure of the senior trust deed, the security for the note has become exhausted and worthless without any act on the part of plaintiff.

9. The proceeds from the note were not used for the purchase price of the property.

10. Defendants have defaulted on the note, as defendants did not make the payment due on Security 28, 1995 and have made no payments due on the note since that time. Defendants currently owe the principal sum of $78,204.79 plus interest at the rate of 15.55% per annum from September 28, 1995 through April 1, 1997 in the amount of $18,325.04 at the per diem rate of $33.32. A true and correct photocopy of the account ledger is attached hereto as Exhibit "D" and incorporated herein by reference.

11. The note provides that defendants will pay all reasonable attorneys; fees if defendants default on the note.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6th day of March, 1997 at Vista, California.

_____

Dave Torlone, Declarant

Richard E. White
Janet B. White
9856 Eucalyptus Street
Spring Valley, California 91977
(619)697-1200

FILED:
MAY 02 1997

Defendants in Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation, Plaintiff, vs. RICHARD E. WHITE, et al., Defendants.	Case No. 00705440 SEPARATE STATEMENT OF DISPUTED FACTS IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT. Date: 05/16/97 Time: 2:00 p.m. Dept: 44 I/C Judge: Anthony C. Joseph Trial Date: none set.

Defendants RICHARD E. WHITE and JANET B. WHITE hereby submit the following separate statement of disputed facts in opposition to plaintiff's motion for summary judgment.

1. Plaintiff's misrepresentations Declaration of Richard E.

about the note induced defendants to execute the note.

2. Plaintiff's employees' conduct prevented defendants from discovering the falsity of plaintiff's employees' misrepresentations.

White and Janet B. White Dated May 2, 1997.

Declaration of Richard E. White and Janet B. White dated May 2, 1997.

Dated: May 2, 1997

RICHARD E. WHITE

JANET B. WHITE

SUPERIOR COURT OF CALIFORNIA, COUNTY SAN DIEGO
case no 705440 clerk Doreen Cadava
date of hearing 05/16/97 time : 02:00 PM Hon. Anthony C. Joseph plaintiff/petitioner defendant/respondent
Security Pacific Financial Service Richard E. White, et al.
attorney for plantiff attorney for defendant
Reynold Paris (1) Richard E. White
1. PLAINTIFF TELE: SJ
this matter having come before the court this date, the court orders:

In the matter of Security Pacific Financial Services v. Richard E. White et al., case number 705440, the Honorable Anthony C. Joseph presiding, the court's tentative ruling is as follows:

The motion for summary judgment filed by plaintiff Security Pacific Financial Services, Inc. is granted. Security Pacific has met its burden by producing admissible evidence on each of the laments of the cause of action. (Security Pacific Separate Statement, Undisputed Fact Nos. 7-12.) Defendants have failed to show the existence of a triable issue of material fact. Defendants' understanding of the meaning of the note is in direct contradiction to the note itself. As a matter of law, defendants cannot defend a claim based on a theory of alleged oral or implied agreement that they would not be personally liable as evidence of such an agreement contradicts the terms of the written agreements and is inadmissible. (Slivinsky v. Watkins Johnson Co. (1990) 221 Cal.App.3d 799, 804-806; Haggard v. Kimberly Quality Care (1995) 39 /Cal.App.4th 508,520.) The parol evidence rule therefore, bars their testimony as to the contemporaneous statements of the loan company employees. The fraud exception to the paroil evidence rule does not apply as the evidence sought to be introduced is of a fraudulent promise which directly contradicts the express terms of the integrated written agreement. (Bank of America etc. Assn. v. Pendergrass (1935) 4 Cal.2d 258;Simmons v. Cal. Institute of Technology (1949) 34 Cal.2d 264, 274-275;cf Continental Airlines, Inc. v. McDonnell Douglass Corp. (1989) 216 Cal.App.3d 388,418-42; Alling v. Universal Manufacturing Corp. (1992) 5 Cal.App.4th 1412, 1436-1437.)

The tentative ruling shall become the final order of the court

nunc pro-tunc, effective on the date the telephonic ruling was issued, in the event (1) oral argument is not requested, or is requested in an untimely manner; or (2) the court confirms the telephonic ruling after oral argument.

Dated: 05/16/97

Anthony C. Joseph
Judge of the supreme court

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

The undersigned declares:

That the undersigned is one of the attorneys of record for the plaintiff in this action.

That the within action does not come within the provisions of the Unruh Act or Rees-Levering Act.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: November 4, 1996, at Santa Monica, California

J.....Paris
Reynold F. Paris, Declarant

JEFFREY A. PARIS, State Bar No. 113527
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Attorneys for Plaintiff

FILED:
MAR 25 1997

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation, Plaintiff, vs. FREDERICK A. BAKER, et al., Defendants.	No. 00704550 SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT DATE: May 16, 1997 TIME: 2 : 00 p.m. PLACE: Department 44 DISCOVERY CUT-OFF: NONE SET MOTION CUT-OFF: NONE SET TRIAL DATE: NONE SET

Plaintiff, Security Pacific Financial Services, Inc., hereby submits the following separate statement of undisputed facts in support of plaintiff's motion for summary judgment.

1. On or about October 28, 1993 at El Cajon, California, defendants executed a promissory note payable to Security Pacific Financial Service, Inc.. A written modification was entered into on December 30, 1994 wherein defendants promised to pay the principal sum of $78,333.79	
2. The note provides for interest at the rate of 15.55% percent per annum.	Declaration of Dave Torlone at 11:25; exhibit "A"
3. Monthly payments in the amount of $1,043.40 were due commencing January 30, 1995.	Declaration of Dave Torlone at 11:26; Exhibit "A"
4. The note was secured by a third deed of trust.	Declaration of Dave Torlone at 12:3-4; Exhibit "B"
5. The deed of trust was subject to a senior deed of trust encumbering the property.	Declaration of Dave Torlone at 12:11
6. The senior lienholder foreclosed on the senior trust deed on April 8, 1996 under a power of sale included in said trust deed.	Declaration of Dave Torlone at 12:13-19
7. No portion of he proceeds of the sale remained to be applied on the note after deducting the amount due the senior trust deed and expenses of sale.	Declaration of Dave Torlone at 12:16-19
8. As a result of the sale of the property by foreclosure of the senior trust deed, the security for the note became exhausted and worthless without any act on the part of the plaintiff.	Declaration of Dave Torlone at 12:20-23

9. The proceeds from the note were not used for the purchase price of the property.	Declaration of Dave Torlone at 12:24-25
10. Defendants defaulted on the note as they have not made the payment due since September 25, 1995, or any since that time.	Declaration of Dave Torlone at 12:26-28
11. Defendant currently owes the principal sum of $78,204.79 plus interest at the rate of 15.55% per annum from September 28, 1995 through April 1, 1997 in the amount of $18,325.04 at the per diem rte of $33.32.	Declaration of Dave Torlone at 13:1-6; Exhibit "D"
12. The note provides that defendant will pay all reasonable attorneys fees if defendant defaults on the note.	Declaration of Dave Torlone at 13:7-8; Exhibit "A"

Dated: March 20, 1997

PARIS AND PARIS

BY

_____

Attorneys for Plaintiff

RICHARD E. WHITE
JANET B. WHITE
9856 Eucalyptus Street
Spring Valley, California 91977
(619) 697-1200

FILED:
MAY 02 1997

Defendants in Propria Persona

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation,	Case No. 000705440
Plaintiff,	DEFENDANTS' DECLARATION IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
-vs-	
RICHARD E. WHITE, et al.,	Date: 05/16/97
Defendants.	Time: 2:00 p.m. Dept: 44 I/C Judge: Anthony C. Joseph Trial Date: none set

RICHARD E. WHITE and JANET B. WHITE, declare as follows:

1. We are husband and wife and are the defendants in this case. The facts stated in this Declaration are within our personal knowledge and true of our own knowledge and, if sworn as witnesses, we could testify competently thereto.

2. At the time of execution of plaintiff's note, and although we were available to execute it during plaintiff's normal business hours and under normal circumstances, plaintiff's loan personnel did not notify us to come in to execute the note and trust deed until right before the close of their business for the day and told us that if we did not come in that day, they would not make us the loan.

As a result, we had no time to read the documents which plaintiff's loan personnel required us to sign. Even to sign the note and related papers kept us at plaintiff's bank branch well after it closed for the day.

3. Although we did not have time to read the loan documents, we did ask plaintiff's loan employees whether or not, if the loan went into default , we would be personally liable for its payment, and were informed by plaintiff's employees that plaintiff would foreclose its note against the property and would obtain repayment through the foreclosure sale of the property, and not from us personally. In reliance on that representation from plaintiff's employees' statements that plaintiff would look solely to the property for repayment of its loan in the event of default, we would not have signed the note.

We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California, on May 2, 1997.

S/ RICHARD E. WHITE
RICHARD E. WHITE

S/ JANET B. WHITE
JANET B. WHITE

RICHARD E. WHITE
JANET B. WHITE
9856 Eucalyptus Street
Spring Valley, California 91977
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FILED:
MAY 02 1997

Defendants in Propria Persona

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation,	Case No. 000705440
Plaintiff,	MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
-vs-	
RICHARD E. WHITE, et al.,	Date: 05/16/97
Defendants.	Time: 2:00 p.m. Dept: 44 I/C Judge: Anthony C. Joseph Trial Date: none set

I

SUMMARY JUDGMENT SHOULD BE DENIED

As shown by the defendants' declaration filed herewith, the misrepresentations of plaintiff's employees that plaintiff would recover its unpaid balance from foreclosure and sale of the property, rather than from defendants personally, induced defendants to execute the note to plaintiff, and the conduct of plaintiff's employees in notifying defendants only at the last moment to come in and sign plaintiff's note and in requiring

defendants to execute the note without sufficient time to read it prior to signing it prevented defendants from discovering the falsity of the misrepresentations of plaintiff's employees that defendants would not be personally responsible for payment of the note, and that plaintiff would look to the property for its repayment.

Summary judgment should be denied unless there are not triable issues of material fact. California Code of Civil Procedure. section 437c

Defendants are entitled to a trial on their claims that they were defrauded into signing plaintiff's note which is the subject of this lawsuit.

Dated: May 2, 1997

Respectfully submitted,

S/ RICHARD E. WHITE
RICHARD E. WHITE

S/ JANET B. WHITE
JANET B. WHITE

FEFFREY A. PARIS, State Bar No. 113527
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Attorneys for Plaintiff

FILED:
MAY -8 1997

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation, Plaintiff, -vs- RICHARD E. WHITE, et al., Defendants.	Case No. 000705440 Assigned to Anthony C. Joseph EVIDENTIARY OBJECTIONS TO DECLARATION OF RICHARD E. WHITE AND JANET B. WHITE DATE: May 16, 1997 TIME: 2:00 p. m. PLACE: Department 44 DISCOVERY CUT-OFF: NONE SET MOTION CUT-OFF: NONE SET TRIAL DATE: NONE SET

Security Pacific Financial Services, Inc., hereby objects to the declaration of Richard E. white and Janet B. White as follows:

1. 1:23-28 and 2:1 "at the time of execution of plaintiff's

note, and although we were available to execute it during plaintiff's normal business hours and under normal circumstances, plaintiff's loan personnel did not notify us to come in to execute the note and trust deed until right before the close of their business for the day and told us that if we did not come in that day , they would not make us the loan."

Objection. Evidence Code Section 350. Irrelevant. Lack of foundation as to the identity of plaintiff's personnel.

2. 2:1-4: "As a result, we had not time to read the documents which plaintiff's loan personnel required us to sign. Even to sign the note and related papers kept us at plaintiff's bank branch well after it closed for the day."

Objection. Evidence Code section 350. Irrelevant.

3. 2:5-16: "Although we did not have time to read the loan documents, we did ask plaintiff's loan employees whether or not, if the loan went into default, we would be personally liable for its payment, and were informed by plaintiff's employees that plaintiff would foreclose its note against the property and would obtain repayment through the foreclosure sale of the property, and not from us personally. In reliance on that representation from plaintiff's employees, we signed the note and deed of trust and other documents presented to us by plaintiff. But for plaintiff's employees' statements that plaintiff would look solely to the property for repayment of its loan in the event of a default, we would not have signed the note."

Objection. Evidence Code Section 350. Irrelevant; The parole evidence rule bars extrinsic evidence of prior contemporaneous agreements to add to or modify the terms of an integrated written instrument unless there is fraud which has not been alleged. See FPI Development, Inc., v. Nakashima (1991) 231 Cal.Ap/3d 367,282 Cal.Rptr. 508.

DATED: May 7, 1997

PARIS AND PARIS

BY_____
Attorneys for Plaintiff

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Attorneys for Plaintiff

FILED:
MAY-8 1997.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation,	Case No. 000705440
	REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
Plaintiff,	
	DATE: May 16, 1997
	TIME: 2:00 p. m.
-vs-	PLACE: Department 44
	DISCOVERY CUT-OFF: NONE SET
RICHARD E. WHITE, et al.,	MOTION CUT-OFF: NONE SET
Defendants.	TRIAL DATE: NONE SET

Security Pacific Financial Services, Inc. hereby replies to the opposition of defendants to the motion for summary judgment as follows:

1. The declaration of defendants is an improper attempt to introduce parol evidence as to the terms of the written promissory note and deed of trust and is therefore inadmissible. Because there is no admissible evidence submitted by the defendants, there are

not triable issues of material fact and this motion must therefore be granted;

2. California law allows a foreclosed holder of a junior deed of trust to directly sue the makers of the underlying promissory note.

THE SOLE OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT IS A DECLARATION ATTEMPTING TO INTRODUCE EXTRINSIC ORAL EVIDENCE WHICH IS BARRED BY THE PAROL EVIDENCE RULE

"Terms set forth in a writing by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement." See California Code of Civil Procedure Section 1856(a) and Havter Trucking , Inc., v. Shell western E & P, Inc. (1993) 18 Cal.App.4th 1, 13-14, 22 Cal.Rptr.2d 229, 237.

The law presumes that a written contract supersedes any prior or contemporaneous oral agreements and that where the writing is integrated, this presumption con not be overcome. See Wagner v. Clendale Adventisut Med. Center (1989) 216 Cal.App.3d 1379, 1385, 265, Cal.Rptr. 412, 416.

Defendants' sole opposition to the motion for summary judgment is the claim that at the time they executed the promissory note and deed of trust, they did not read the documents and were told by plaintiff's representatives that they would not be held personally liable in the event of a default.

Here, the terms of the contract are set forth in writing and therefore the terms of the contract are as set forth in those writings, which are attached to the declaration of Dave Torlone as Exhibits A, B and C. It should also be noted that the de defendants executed the modification of the agreement on December 30, 1994, over a year after the initial loan on October 28, 1993.

The defendants voluntarily entered into this agreement and are legally bound by the terms thereof.

As the only evidence offered is extrinsic oral evidence which is barred by the parole evidence rule as set forth above, there are no triable issues of material fact set forth in opposition to this motion and therefore it must be granted.

CALIFORNIA LAW ALLOWS FOR A SOLD OUT JUNIOR DEED OF TRUST HOLDER TO OBTAIN JUDGMENT ON ITS PROMISSORY NOTE

In California, a second trust deed holder may properly bring an action to recover the unpaid balance due under its promissory note, not with standing the prior foreclosure sale by the senior lienor. /see Hidden v. soule (1935) 7 Cal.App.2d 45.

Moreover, as the Court stated in Roseleaf Corp. V. Chieringhino (1963) 27 Cal.Rptr. 873, 59 Cal. 2d 35;

> "The position of a junior lienor whose security is lost through a senior sale is different from that of a selling senior lienor." (Page 41.) (Emphasis added).

And the relevant statues have

> "...not limited such judgments when sought by non-selling junior lienors." (Page 40). (Emphaiss Added).

See also Investcal Realty corporation v. Edgar H. Mueller Const. Co., (1956) 247 Cal.App. 2d 190 and Giandeini v. Ramirez (1936) 11 Cal.App. 469, 472.

If the property is sold pursuant to the foreclosure of a senior encumbrance, the security of a junior lien thereby becomes valueless and the junior lienor of a non-purchase money lien can sue the trustor directly without foreclosure 1 Cal. RE Rev 488.

Accordingly, plaintiff may properly recover the balance due and owing on the promissory note from these defendants.

CONCLUSION

Based upon the foregoing, the motion for summary judgment filed by the plaintiff, the declarations in support thereof and the separate statement filed concurrently therewith, as there is no triable issue of material fact, plaintiff respectfully requests that

this motion for summary judgment be granted as prayed.

DATED: May 7, 1997

PARIS AND PARIS

BY_____
Attorneys for Plaintiff

RICHARD E. WHITE
JANET B. WHITE
9856 Eucalyptus Street
Spring Valley, California 91977
(619) 697-1200

FILED: MAY-9 1997

Defendants in Propria Persona

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation,	Case No. 000705440
Plaintiff,	AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT.
-vs-	
RICHARD E. WHITE, et al.,	Date: May 16, 1997 Time: 2:00 p.m. Dept: 44
Defendants.	I/C Judge: Anthony C. Joseph Trial date: None set

I

RIGHT TO AMEND PLEADING

CCP 472 provides that a pleading can be amended at any time; prior to filing of answer.

II

CONTRACT IS INVALID BECAUSE INTENT WAS NOT FREELY COMMUNICATED

In order for a contract to be valid, "the consent of the parties to a contract must be: free, mutual, and communicated by each to the other". CC1565 (1) *2) (3).

III

WRITTEN PORTION OF CONTRACT WAS EXACTLY OPPOSITE TO ORAL AGREEMENT

"A contract must be lawful,...reasonable,...and without violating the intention of the parties" CC1643.

IV

WRITTEN CONTRACT WAS QUALIFIED AND INSEPARABLE FROM ORAL AGREEMENT

Security Pacific qualified the agreement by representing to defendants that no liability would follow in the event of an unforseen foreclosure action; which was inseparable from the original contract. "An acceptance (of contract) must be absolute and unqualified.....A qualified acceptance is a new proposal" CC1585:

V

DEFENDANTS CONTRACT LIABILITY MUST BE DISREGARDED

Plaintiff's contention within contract claiming defendants continuing liability upon foreclosure action does not express real intention of mutual consent of parties; and therefore continuing liability portion of contract upon defendants must be disregarded.

CC1640. "Fraud, Mistake, or Accident Obscuring Intent.

When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded. Leg.H.1872"

VII

DEFENDANTS WERE FRAUDULENTLY INDUCED INTO CONTRACT

Actual fraud was committed by Security Pacific in consumating the contract: and through the use of deciet, induced defendants into the agreement.

CC1572. "Actual Fraud.

Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

3. The suppression of that which is true, by one having knowledge or belief of the fact;

4. A promise made without any intention of performing it: or,

5. Any other act fitted to deceive. Leg.H.1872".

VIII

PLAINIFFS PREVENTED ORAL AGREEMENTS' WRITTEN ENTRY INTO CONTRACT

Security Pacific prevented the oral agreement between parties; from being put in writing; and led defendants to believe the oral agreement was part of the written contract; which it was not. Therefore defendants have the right to enforce the contract against the fraudulent party.

CC1623. "Writing Prevented by Fraud or Misprepresentation That Writing Exists.

Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing and acts upon such belief to his prejudice, may enforce it against the fraudulent party. Leg.H 1872".

IX

PLAINTIFFS CONTRACT IS NOW VOID

The consideration of continuing liability upon defendants was fraudulently conceived by Security Pacific; and therefore the entire contract is void

CC1608. "Illegality, Partial and Total.

If any part of single consideration for one or more objects, or of several considerations for a single object, it unlawful, the entire contract is void. Leg.H".

X

CONTRACT IS VOID IF IT DEPRIVES DEFENDANTS OF CIVIL RIGHTS

Fraudulent, contract and Motion for summary judgement; which was conceived by Security Pacific; unlawfully deprives defendants of property and Constitutional Right to fair trial. Therefore, contract can be adjudged void, or canceled.

CC3412. "Void or Voidable Instrument.

A written instrument, in respect to which there is reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled. Leg.H. 1872".

XI

SUMMARY JUDGMENT SHOULD BE DENIED

As shown by the defendants' declaration filed herewith, the misrepresentations of plaintiff's employees that plaintiff would recover its unpaid balance from foreclosure and sale of the property, rather that from defendants personally, induced defendants to execute the note to plaintiff, and the conduct of plaintiff's employees in notifying defendants only at the last moment to come in and sign plaintiff's note and in requiring defendants to execute the note without sufficient time to read it prior to signing it prevented defendants fro discovering the falsity of the misrepresentations of plaintiff's employees that defendants would not be personally responsible for payment of the note, and that plaintiff would look to the property for its repayment.

Defendants are entitled to a trial on their claims that they were defrauded into signing plaintiff's note which is the subject of this lawsuit.

In addition, there are triable issues of material fact, which involve contract validity; lawfulness; mutual consent; Constitutional Rights of Property/and Fair Trial.

Summary judgment should be denied unless there are not triable issues of material fact. California Code of Civil Procedure, Section 437c.

Dated: 5/8/97
S/ RICHARD E. WHITE
RICHARD E. WHITE

Respectfully submitted,
S/JANET B. WHITE
JANET B. WHITE

RICHARD E. WHITE
JANET B. WHITE
9856 Eucalyptus Street
Spring Valley, California 91977
(619) 697-1200

Defendants in Propria Persona

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation, Plaintiff, -vs- RICHARD E. WHITE, et al., Defendants.	Case No. 000705440 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR SUMMARY JUDGEMENT. Date: 05/16/97 Time: 2:00 p.m. Dept: 44 I/C Judge: Anthony C. Joseph Trial date: None set

I

SUMMARY JUDGMENT SHOULD BE DENIED

As shown by the defendants' declaration filed herewith, the misrepresentations of plaintiff's employees that plaintiff would recover its unpaid balance from foreclosure and sale of the property, rather than from defendants personally, induced

defendants to execute the note to plaintiff, and the conduct of plaintiff's employees in notifying defendants only at the last moment to come in and sign plaintiff's note and in requiring defendants to execute the note without sufficient time to read it prior to signing it prevented defendants from discovering the falsity of the misrepresentations of plaintiff's employees that defendants would not be personally responsible for payment of the note, and that plaintiff would look to the property for its repayment.

Summary judgment should be denied unless there are not triable issues of material fact. California Code of Civil Procedure, Section 437c

Defendants are entitled to a trial on their claims that they were defrauded into signing plaintiff's note which is the subject of this lawsuit.

Dated: May 2, 1997

Respectfully submitted,

S/ RICHARD E. WHITE
RICHARD E. WHITE

S/ JANET B. WHITE
JANET B. WHITE

RICHARD E. WHITE
JANET B. WHITE
9856 Eucalyptus Street
Spring Valley, California 91977
(619) 697-1200

Defendants in Propria Persona

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

SECURITY PACIFIC FINANCIAL SERVICES, INC., a corporation,	Case No. 000705440
Plaintiff,	SEPARATE STATEMENT OF DISPUTED FACTS IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
-vs-	Date: 05/16/97 Time: 2:00 p.m. Dept: 44
RICHARD E. WHITE, et al., Defendants.	I/C Judge: Anthony C. Joseph Trial date: None set

Defendants RICHARD E. WHITE and JANET B. WHITE hereby submit the following separate statement of disputed facts in opposition to plaintiff's motion for summary judgment.

1. Plaintiff's misrepresentations about the note induced defendants to execute the note.	Declaration of Richard e. White and Janet B. white dated May 2, 1997
2. Plaintiff's employees' conduct prevented defendants from discovering the falsity of plaintiff's employees' misrepresentations.	Declaration of Richard E. White and Janet B. White dated May 2, 1997

Dated: May 2, 1997

S/RICHARD E. WHITE
RICHARD E. WHITE

S/JANET B. WHITE
JANET B. WHITE

EDWIN L. MILLER, JR.
District Attorney
HENRY R. MANN
Deputy District Attorney
7002 County Courthouse
San Diego, California 92101
236-2370

Attorneys for the Office of the District Attorney

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

HUBERT C. JOHNSTONE, et al.,)
No. 370479

)

Plaintiffs,
)

v.)

)

)

RICHARD WHITE, et al.,)

)

Defendants.

)

)

_____)

)

WILLIAM J. COWELS, et al.)

)

No. 374094

)

Plaintiffs,

)

)

v.

)

)

RICHARD WHITE, et al.,)

)

Defendants.

)

)

_____)

RANDALL A. ANDERSON,

Plaintiff,

v.

RICHARD WHITE, et al.,

Defendants.

No. 397708

CLAIM OF PRIVILEGE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, RICHARD D. HUFFMAN, declare that:

1.

I am the Chief Deputy District Attorney, representing the District Attorney of the County of San Diego as Custodian of Records of the type requested in the Subpena Duces Tecum Re Deposition and Declaration in Support of Subpoenas Duces Tecum dated March 27, 1978, and Declaration in Support of Subpoenas Duces Tecum dated May 8, 1978, filed in the above-entitled action.

2.

I am authorized by the District Attorney of the County of San Diego to claim a privilege against disclosure of the information requested in the Subpena Duces Tecum under California Evidence Code Section 1040.

3.

There is a necessity for preserving the confidentiality of the documents, writings, files, records, reports, notes, minutes, letters, recordings, complaints and material which are in the possession of the District Attorney of the County of San Diego and which conform to the description of certain material sought in the Subpena Duces Tecum Re Deposition and Declarations in Support of Subpoenas Duces Tecum filed herein.

4.

The information that is contained in the material described in paragraph 3 of this Declaration was acquired in confidence by a public employee in the course of his duties and is not open and has not been officially disclosed to the public.

5.

The District Attorney of the County of San Diego claims the privilege against disclosure of the information requested in the Subpena Duces Tecum Re Deposition and Declaration in Support of Subpoenas Duces Tecum filed in this action regarding the records of the District Attorney of the County of San Diego, under California Evidence Code Section 1040.

6.

The District Attorney of the County of San Diego requests a hearing in camera under

California Evidence Code Section 915 to determine the privilege under Evidence Code Section 1040.

I declare under penalty of perjury the foregoing is true and correct.

Executed at San Diego, California, on May 18, 1978.

_____

RICHARD D. HUFFMAN

_____

BOARD OF SUPERVISORS PUBLIC DOCUMENTS

INDEX OF GRAND JURY RECORDS

DOCUMENT #	DATE	DESCRIPTION
1	8/6/75	Letter to General Louis Mezger, Foreman, San Diego County Grand Jury, from Richard D. Huffman, Chief Deputy District Attorney
2	7/30/75	Autopsy Report by Dr. Losada of the Office of the Coroner
3	10/28/75	Letter to John F. Duffy, Sheriff, from Louis Metzger, Foremean, San Diego County Grand Jury
4	11/5/75	Memo to Board of Supervisors from Jack Walsh, First District Supervisor, re jail advisory committees
5	12/16/75	Memo to Civil Service Commission from County Counsel re citizens' charges against Deputy Mayer Sheriffs Cowels, and Howers
6	12/29/75	Memo to Board of Supervisors from Civil Service

		Commission re:complaint by Richard E. White against Sheriff'spersonnel in arrest of Michael G. Nolan
7.	2/9/76	Memo to County Counsel from Edwin L. Miller, Jr., District Attorney, re proposed ordinance -Citizens' Review Panel
8	2/24/76	Ordinance
9	6/22/76	Memo to Board of Supervisors from Director of Personnel re Civil Service Commission response on Russell Chamberlain death
10	7/21/76	Letter to Clerk of the Board of Supervisors from United States Attorney re Russell Lee Chamberlain
11	12/22/76	Letter to Board of Supervisors from County Counsel re release of Grand Jury transcript
12	3/16/77	Letter to Board of Supervisors from County Counsel re attached draft Bill to require Attorney General to

13	3/28/7	investigate deaths at a county jail Memo to Board of Supervisors from John F. Duffy, Sheriff, re proposed legislation re the Attorney General

EXHIBIT "A"

BOARD OF SUPERVISORS PUBLIC DOCUMENTS

INDEX OF ANIMAL REGULATION DEPT. RECORDS

DOCUMENT #	DATE	DESCRIPTION
		18/16/74Letter to Michael Carpenter Deputy District Attorney, El Cajon, CA. From Judge Donald W. Smith, Municipal Court, El Cajon, CA. Re People v. Dick White
2	2/6/75	Letter to F. J. Bloomingdale, Esq. And Robert G. Berrey, County Counsel, from Judge Robert W. Conyers, Superior Court, re Ann Sharisse Krohn v. County of San Diego, et al.
3	3/2/75	Order of Removal (Russell H. Schmidt, Chief of animal Regulation)
4	3/10/75	Letter to Board of Supervisors from County Veterinarian re request for legal representation by County Counsel
5	3/18/75	Board of Supervisors Minutes No. 60 and 3/24/75 memo re same

6	4/9/75	Letter to Board of Supervisors from County Counsel re request of the County Veterinarian for legal counsel to represent him and the Chief hearings before the Civil Service Commission
7	4/22/75	Board of Supervisors Minutes No. 82
8	5/13/75	Board of Supervisors Minutes No. 87
9	4/29/75	Board of Supervisors Minutes No. 5
10	4/23/75	Memo to Chief Administrative Officer from Clerk of the Board of Supervisors ordering action held in abeyance re #6 above
11	5/28/75	Memo to Chief Administrative Officer from Clerk of the Board of Supervisors re findings of Board in proceeding against Russell Schmidt
12		Request by Richard E. White to speak in opposition to 17
13	4/28/75	Notice of Charges and Right to Answer

14	4/30/75	Letter to Board of Supervisors from Russell Schmidt, Chief of Animal Regulation, re request for defense by County
15	4/30/75	Same as #14 without signature
16		Pages 2 and 3 regarding allegations (signed by H.C.Johnstone, County Veterinarian)
17	4/29/75	Board of Supervisors Minutes No. 97
18	5/1/75	Memo to Chief Administrative Officerfrom Clerk of the Board of Supervisors re #10 above
19	5/8/75	Letter to Chairman and Members of Civil Service Commission from W.O. Speckmann, Animal Regulation District Supervisor

INDEX OF DOCUMENTS FROM CIVIL SERVICE COMMISSION

Re: W. J. Cowels & M. S. Meyer

1. CITIZENS CHARGES AND ORDER OF REMOVAL WITH ATTACHED EXHIBITS DATED FEBRUARY 6, 1976.

2. LETTERS TO CIVIL SERVICE COMMISSION FROM MARK MEYER AND WILLIAM COWELS RE ALLEGATIONS MADE BY RICHARD E. WHITE DATED FEBRUARY 18, 1976.

3. MEMO TO WILLIAM D. WINTERBOURNE, DIRECTOR OF PERSONNEL, FROM JOHN F. DUFFY, SHERIFF, RE CITIZEN COMPLAINT BY R. E. WHITE DATED MARCH 10, 1976.

4. MEMO TO CIVIL SERVICE COMMISSION FROM COUNTY COUNSEL RE CITIZEN'S CHARGES AGAINST DEPUTY SHERIFFS W. J. COWELS AND M. S. MEYER DATED MARCH 24, 1976.

5. MEMO TO CIVIL SERVICE COMMISSION FROM WILLIAM D. WINTERBOURNE RE RICHARD WHITE'S CITIZEN COMPLAINT - SHERIFF'S DEPARTMENT DATED MAY 4, 1976.

6. MEMO TO WILLIAM WINTERBOURNE, SECRETARY OF THE CIVIL SERVICE COMMISSION, FROM COUNTY COUNSEL RE CITIZEN CHARGES AGAINST COWELS AND MEYER DATED MAY 6, 1976.

7. MEMO TO W. J. COWELS, M. S. MEYER, COUNTY COUNSEL; SHERIFF DUFFY, AUDITOR & CONTROLLER; ATTORNEY ROBERT T. THIESSEN FROM WILLIAM D. WINTERBOURNE RE CITIZEN CHARGES AGAINST COWELS AND MEYER DATED MAY 6, 1976.

8. MEMO TO WILLIAM D. WINTERBOURNE, DIRECTOR OF PERSONNEL, FROM JOHN F. DUFFY, SHERIFF, RE CITIZEN CHARGES AGAINST DEPUTIES COWELS AND MEYER DATED MAY 10, 1976

EXHIBIT "B"

INDEX OF DOCUMENTS FROM CIVIL SERVICE COMMISSION

Re: CITIZEN COMPLAINTS FILED BY RICHARD WHITE AGAINST ANIMAL REGULATION PERSONNEL

1. LETTER TO CIVIL SERVICE COMMISSION FROM JAMES M. MOON RE CITIZEN COMPLAINT FILED BY RICHARD E. WHITE DATED JANUARY 31, 1975.

2. LETTER TO CIVIL SERVICE COMMISSION FROM RICHARD E. WHITE DATED FEBRUARY 11, 1975

3. LETTER TO CIVIL SERVICE COMMISSION FROM COUNTY COUNSEL RE CITIZEN'S CHARGES FILED BY RICHARD E. WHITE DATED FEBRUARY 13, 1975.

4. ORDER OF REMOVAL WITH ADDENDUM DATED MARCH 2, 1975.

5. LETTER TO PAYROLL CLERK AT COUNTY VETERINARIAN OFFICE FROM RICHARD E. WHITE DATED MARCH 10, 1975.

6. LETTER TO DIRECTOR OF PERSONNEL FROM COUNTY VETERINARIAN RE RULES FOR DETERMINING CHARGES FILED BY CITIZENS DATED MAY 6, 1975.

7. LETTER TO WILLIAM D. WINTERBOURNE, DIRECTOR OF PERSONNEL, FROM JOHN F. DUFFY, SHERIFF, RE RULES FOR DETERMINING CHARGES FILED BY CITIZENS DATED MAY 12, 1975.

8. LETTER TO SUPERVISOR JIM BATES FROM H. C. JOHNSTONE, COUNTY VETERINARIAN, RE BOARD AGENDA ITEM NO. 17 (REGARDING THE PRINCIPLE OF THE COUNTY FURNISHING LEGAL REPRESENTATION TO AN EMPLOYEE IN PROCEEDINGS BROUGHT BY A CITIZEN IN FRONT OF THE CIVIL SERVICE COMMISSION) DATED MAY 13, 1975.

9. CORRESPONDENCE AND DOCUMENTATION RE WHITE V. SCHMIDT, ET AL., SUPERIOR COURT NO. 365351.

10. MEMO TO CIVIL SERVICE COMMISSION FROM WILLIAM D. WINTERBOURNE, DIRECTOR OF PERSONNEL, RE RESPONSE TO CHARGES AGAINST ME BY RICHARD E. WHITE DATED MAY 21, 1975.

11. LETTER TO C. HUGH FRIEDMAN, CHAIRMAN, CIVIL SERVICE COMMISSION, FROM EDWIN L. MILLER, JR., DISTRICT ATTORNEY, DATED MAY 21, 1975.

12. MEMO TO JAMES M. MOON FROM WILLIAM D. WINTERBOURNE RE CITIZEN CHARGES AGAINST COUNTY EMPLOYEES DATED JUNE 4, 1975.

13. MEMO TO HUBERT JOHNSTONE FROM WILLIAM D. WINTERBOURNE RE CITIZEN CHARGES AGAINST COUNTY EMPLOYEES DATED JUNE 4, 1975.

14. LETTER TO H. C. JOHNSTONE FROM RUSSELL H. SCHMIDT, CHIEF OF ANIMAL REGULATION, RE MR. SCHMIDT'S

RETIREMENT FROM COUNTY SERVICE ON JULY 5, 1975.

15. LETTER TO CIVIL SERVICE COMMISSION FROM H. C. JOHNSTONE, COUNTY VETERINARIAN, RE CITIZEN CHARGES AGAINST RUSSELL H. SCHMIDT DATED JUNE 20, 1975.

16. LETTER TO CIVIL SERVICE COMMISSION FROM JAMES GILSHIAN, ACTING DIRECTOR OF ANIMAL CONTROL, RE CITIZEN COMPLAINT BY RICHARD E. WHITE CONCERNING ****(remaining is not visible on document)***

Appendix C

To: Justice's Huffman, Nares and Haller:

Yesterday at approximately 5:00 P.M., your file clerk and I had difficulty determining whether or not there was an original signature on the attached proof of service. A re-signed original signature is attached hereto, on this filing.

Late yesterday afternoon we had a photocopy machine malfunction which temporarily delayed the printing of this brief; and consequently, I could not file yesterday by 5:00 P.M.

I have also noticed an inadvertent typographical error in Appellants Petition on page 10, line 23. The missing number that should appear there is "9".

As you recall on 4/12/99, Justice Huffman made an emphatic denial that he had any recollection of events surrounding Betty Jean Tucker Drayner, or myself.

In DO020483 Justice Kremer, Huffman & Nares; were in possession of several communications between myself, Superior Court and the Appellate Court complaining of the relationship between the presiding Judge of Superior Court Howatt; and presiding Justice Kremer; who had attempted to have found insane; in order to prevent me from being a witness in a slander action involving Drayner.

In those communications, I also complained about the relationship of my IC Judge Gamer; who employed John Alessio, Jr. as her law clerk; the fact that Gamer was married to Judge Adams (convicted ob bribery): my trial Judge, Raul Rosado, (a customer of Drayner); and Drayners sentencing Judge, Earl Gilliam, also a customer of Drayners.

If you check your files in DO020483; you will find that Justice Kremers & Justice Hoffmans signatures appear on two documents that were sent back to me; acknowledging their receipt of my concerns.

Please excuse my late filing of evidence; and give this matter your urgent consideration.

Respectfully submitted

S/Richard White 5/5/99

CC1567. Duress, Fraud, Undue Influence, and Mistake.

An apparent consent is not real or free when obtained through:

1. Duress;
2. Menance;
3. Fraud;
4. Undue influence; or
5. Mistake. LegH 1872.

CC1571. Fraud - Kinds

Fraud is either actual or constructive. **Leg.H** 1872

CC1572. Actual Fraud.

Actual fraud, within the meaning of this chapter consists in any of the following acts, committed by a party to the contract, or with his connivance, with the intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is no true, by one who does not believe it to be true;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
3. The suppression of that which is true, by one having knowledge or belief of the fact;
4. Any other act fitted to deceive.

CC1574. Question of Fact

Actual fraud is always a question of fact.

CC 1622. Oral Contracts – Validity.

All contracts may be oral, except such as are specially required by statute to be in writing.

CC 1623. Writing Prevented by Fraud or Misrepresentation That Writing Exists.

Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereof, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

CC 1640. Fraud, Mistake, or Accident Obscuring Intent.

When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous part of the writing disregarded.

CC 1649 Understanding of Obligee.

If the terms of a promise are in any repect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

CC 1709. Deceit – Damages.

One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damages which he thereby suffers.

CCP 1856 - Variation of Terms of Document by Prior Agreement or Parol Agreement

(a) Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement.

(g) This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in Section 1860, or to explain an

extrinsic ambiguity or otherwise interpret the terms of the agreement, or to establish illegality or fraud.

CC 1916. Impeaching Judgment – Grounds.

Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings

CCP437. c (c) Summary Judgement - Action without Merit or Defence

"(c) The motion for summary judgement shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgement as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the paters, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgement shall not be granted by the court based on inferences reasonably dedcuible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact."

CCP 473.

"The court may, upon such terms as may be just, relieve a party or his or her legal representative from a judgment, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect."

CCP 580a. Judgment, How Procured – When Debt is Secured by Real Property.

"Whenever a money judgment is sought for the balance due upon an obligation for the payment of which a deed of trust

or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, the plaintiff shall set forth his or her complaint the entire amount of the indebtedness which was secured by the deed of trust or mortgage at the time of sale, the amount for which the real property or interest therein was sole and the fair market value thereof at the date of sale and the date of that sale. Upon the application of either party made at least 10 days before the time of trial the court shall, and upon its own motion the court at any time may, appoint one the probate referees provided for by law to appraise the property or the interest therein sold as of the time of sale. The referee shall file his or her appraisal with the clerk and that appraisal shall be admissible in evidence. The referee shall take and subscribe an oath to be attached to the appraisal that he or she has truly, honestly and impartially appraised the property to the best of his or her knowledge and ability. Any referee so appointed may be called and examined as a witness by any party or by the court itself. The court must fix the compensation of the referee in an amount as determined by the court to be reasonable, but those fees shall not exceed similar fees for similar services in the community where the services are rendered, which may be taxed and allowed in like manner as other costs. Before rendering any judgment the court shall find the fair market value of the real property, or interest therein sold, at the time of sale. The court may render judgment for not more than the amount by which the entire amount of the indebtedness due at the time of sale exceeded the fair market value of the real property or interest therein sold at the time of sale with interest thereon from the date of the sale; provided, however, that in no event shall the amount of the judgment, exclusive of interest after the date of sale, exceed the difference between the amount of the indebtedness secured by the deed of trust or mortgage. Any such action must be brought within three months of the time

of sale under the deed of trust or mortgage. No judgment shall be rendered in any such action until the real property or interest therein has first been sold pursuant to the terms of the deed of trust or mortgage, unless the real property or interest therein has become valueless."

CCP 592. Fact Issues for Jury or Referee or Court – Decision of Law Issue First.

In actions for the recovery of specific, real, or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered, as provided in this code. Where in these cases there are issues both of law and fact, the issue of law must be first disposed of. In other cases, issues of fact must be tried by the court, subject to its power to order any such issue to be tried by a jury, or to be referred to a referee, as provided in this code.

CCP 663 (1) Vacating Judgement - Grounds

A judgement or decree, when based upon a decision by the court, or the special verdict or a jury, may, upon motion of the party aggrieved, be set aside and vacated by the same court, and another and different judgement entered, for either of the following causes, materially affecting the substantial rights of the party and entitling the party to a different judgement:

1. Incorrect or erroneous legal basis for the decision, not consistant with or not supported by the facts; and in such case when the judgement is set aside, the statement of decision shall be amended and corrected.

CCP 907 Appeal Frivolous or Taken Soley for Delay.

When it appears to the reviewing court that the appeal was frivolous ot taken soley for delay, it may add to the costs on appeal such damages as my be just. **Leg.H.** 1968 ch.385

CCP 908 Action When Judgement Reversed or Modified

When the judge ment or order is reversed or modified, the reviewing court may direct that the prties be returned so far as possible to the positios they occupied before the enforcement of or execution on the judgement or order. In doing so, the reviewing court may order restitution on reasonable terms and conditions of all property and rights lost by ther erroneous judgement or order, so far as such restitution is consistant with rights of third parties and may direct the entry of a money mudgement sufficient to compensate for property or rights not restored. The reviewing court may take evidence and make findings concerning such matters or may, by order, refer such matters to the trial court for determination. **Leg.H.** 1968 ch. 385

Rule 23. Findings and Additional Evidence on Appeal.

(a) [Request for Findings] A request that the reviewing court makes findings of fact shall contain a draft of the proposed findings, and may be made in a brief, or a separate application may be served and filed. If opposing counsel has not had an opportunity in his brief to object to the request, he may serve and file written objection thereto.

(b) [Application to Produce Evidence] Proceedings for the production of additional evidence on appeal shall be in accordance with rule 41. The court may grant or deny the application in whole or in part, and subject to such conditions, as it may deem proper. If the application is granted, the court, by appropriate order, shall direct that the evidence be taken before the court or a department or a justice thereof, or before a referee appointed for the purpose. The court shall also prescribe reasonable notice of the time and place for the taking of the evidence and shall indicate the issues on which the evidence is to be taken. Where documentary evidence is offered, either party may submit the original or a certified or photostatic copy, thereof and the court may admit the document in evidence and add it to the

record on appeal.

Rule 29. Grounds for Review in Supreme Court.

(A) (Grounds) Review by the Supreme Court of a decision of a Court of Appeal will be ordered (1) where it appears necessary to secure uniformity of decision or the settlement of important questions of law; (2) where the Court of Appeal was without jurisdiction of the cause; or (3) where, because of disqualification or other reason, the decision of the Court of Appeal lacks the concurrence of the required majority of qualified judges.

(B) (Limitations) As a matter of policy, on petition for review the Supreme Court normally will not consider: (1) any issue that could have been but was not timely raised in the briefs filed in the Court of Appeal; (2) any issue or any material fact that was omitted from or misstated in the opinion of the Court of Appeal, unless the omission or misstatement was called to the attention of the Court of Appeal in a petition for rehearing. All other issues and facts may be presented in the petition for review without the necessity of filing a petition for hearing.

170.6. Preemptory Challenge.

(1) No judge, court commissioner, or referee of any superior, municipal or justice court of the State of California shall try any civil or criminal action or special proceeding of any kind or character or hear any matter therein which involves a contested issue of law or fact when it shall be established as hereinafter provided that the judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney appearing in the action or proceeding.

BPC 6068. Duties of attorney

It is the duty of an attorney to do all of the following:

(a) To support the Constitution and laws of the United States and of this state.

(b) To maintain the respect due to the courts of justice and judicial officers.

(c) To counsel or maintain such actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.

(d) To employ, for the purpose of maintaining the causes confided to him or her such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(o) To report to the agency charged with attorney discipline, in writing, within 30 days of the time the attorney has knowledge of any of the following:

(5) . . . or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or any such misdemeanor.

(7) Reversal of judgement in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

Pleading § 48.5 - summary judgement

9. Controverted allegations of fraud cannot be resolved upon motion for summary judgement, but only by a trial on the merits.

Rule 83.5 Attorneys - Admission to Practice Standards of Conduct - Duties

f. Discipline.

5. Original Disciplinary Investigations and Proceedings Initiated in This Court.

The "Standing Committee on Discipline" shall investigate any charge or information referred by one of the judges or otherwise coming to the attention of the committee, that any member of the bar of this court or that any attorney permitted to practice in the court has been guilty of unprofessional conduct. At the request of the committee, the chief judge shall direct the issuance of subpoenas and subpoenas duces tecum as may be required by the investigation.

FECP. 59 a Grounds for New Trials

- *Verdict Against the Weight of Evidence,*
- *Verdict is Excessive or Inadequate,*
- *Improper Conduct by Counsel or Court*, when improper conduct by either an attorney or the court unfairly influenced the verdict.[11]

FECP. 60 Reasons for Granting Relief

The Rule provides five specified reasons for which relief may be granted, and adds a sixth catchall category for reasons not specifically listed.

" Where respondent failed to answer petition for writ of mandate, allegations of petition were required to be taken as true for purpose of the action. Rodregues v. Municipal Court of Visalia Judicial Dist. (1972) 102 CalRptr. 45,25 C.A. 3rd 521"

" Affidavits were regarded as pleadings, and as judgement debtor had burden of proof, his allegation which were not controverted by creditor were taken as true, and debtor was not required to prove them. Lentfoehr v. Lentfoehr (1955) P.2d 1019, 134 C.A.2d. Supp. 905."

"Where respondents neither admit nor deny material allegations of petition, they stand admitted. George v. Beaty (1927) 260 P.386, 85C.A.525"

"Judgement may be set aside on motion, where erroneous conclusions of law are inconsistent with findings of fact. Irer v Gawn (1929) 277 P. 1053, 99 C.A. 17."

"Equity will relieve an injured party from the effect of a judgement procured by extrinsic fraud. Gump v Gump (1941) 108 P.2d 21, 42C.A.2d 64; Baker v. Baker (1933) 18 P.2d 61, 217 C.216."

A lower court's finding is "clearly erroneous" when, although there is evidence that supports it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Duke Power Co. v. Carolina Environmental Study Group, Inc. 438 US 59, 98 S Ct 2620 **57 l Ed 2d 595**

The determination of the factual content of ambiguous testimony is for the trial court, and such determination can be set aside on review only if "clearly erroneous." Guzman v Ruiz Pichirilo, 369 US 698, 82 S Ct 1095, **8 L Ed 2d 205**

First Amendment questions of constitutional fact compel the United States Supreme Court's do novo review. Bose Corp. v Consumers Union of United States, Inc. 466 US 485, 104 S Ct. 1949, **80 L Ed 2d 502**

The United States Supreme Court has an obligation to test challenged judgements against the First and Fourteenth Amendments and in doing so cannot avoid making an independent constitutional judgement on the facts of the case. Bose Corp. v Consumers Union of United States, Inc. 466 US 485, 104 S Ct 1949, **80 L Ed 2d 503**

Beri v Rogero, 168 Cal 736, 740 [145 P. 951]:
" The law does not favor snap judgements. The policy of the law is to have every litigated case tired upon its merits, and it looks with disfavor upon a party who, regardless of the merits of his case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary. Where a party in default makes seasonable application to be relieved therefrom, and files an affidavit of mertis alleging a good defense, and the plaintiff files no counter affidavit and makes no showing that he has suffered any prejudice or that injustice will result from the trial of the case upon its merits, very slight evidence will be required to justify a court in setting aside the default. A broad discretion is allowed to courts in granting relief, against default, and its is in cases only where the lower court has abused its discretion that the appellate court will reverse its action."

Fiske v. Buder

Fraud, whether intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party are express grounds for relief by motion under amended subdivision (b). There is no sound reason for their exclusion. The incorporation of fraud and the like within the scope of the rule also removes confusion as to the proper procedure. It has been held that relief from a judgement obtained by extreme fraud can be secured by noting within a "reasonable time," which might be after the time stated in the rule had run. *Fiske v. Bauder,* C.C.A.8, 1942, 125 F 2d 841; see also inferentially *Bucy v Nevada Construction Co.,* C.C.A.9, 1942, 125 F 2d 213.

States § 18 - conflict with federal law.

2. Under Article 6, clause 2, of the Federal Constitution, providing that federal law shall be the supreme law of the land, the relative importance to the state of its own law is not material when there is a conflict with a valid federal law; any state law, however clearly within a state's acknowledged power, which interferes with or is contrary to federal law must yield.

Free v Bland 369 US 663, 8 L ed 2d 180, 82 S Ct 1089

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff and Respondent, v. DICK WHITE Defendant and Appellant.	D020483 (Super. Ct. No. 655390) **Filed** **January 29, 1997**

APPEAL from a judgment of the Superior Court of San Diego County, Raul Rosado, Judge. Affirmed.

We affirm the judgement in this insurance subrogation action because the defendant, acting in pro per, has not pointed to any facts in the record which entitle him to a new trial.

FACTUAL AND PROCEDURAL SUMMARY

On September 1, 1989, Judie Carey's home was severely damaged when a water main broke near her house. Water and mud from the break damaged her landscaping, furnishings, rugs and carpeting. The main broke when it was hit by an excavator retained by defendant and appellant Dick White, who owned property adjacent to Carey's home.

Carey made a claim on her homeowner's insurance policy, which had been issued by plaintiff and respondent State Farm Fire and Casualty Company (State Farm). State Farm eventually paid Carey $65,000 on the claim and in October 1992 State Farm filed a subrogation action against White.

Trial was initially scheduled to commence on September 24, 1993. On August 10, 1993, White's counsel substituted out of the case and White substituted himself in pro per. According to White, the substitution occurred because he could no longer afford his counsel's services.

On September 13, 1993, White moved for a continuance, for leave to file his cross-complaint, for leave to conduct additional discovery and for permission to designate a new expert. The trial court, the Hon. Barbara Gamer presiding, continued the trial to October 29,-1993, and granted White's request to designate a new expert. However the trial court denied White leave to file his cross-complaint.

On October 29, 1993, White filed a motion for a second continuance and to file a cross-complaint against State Farm. support of his motion, he argued that he had discovered evidence State Farm had not properly investigated Carey's damage claim before paying her $65,000 and that at the time it initiated its subrogation action, State Farm knew Carey could not substantiate all of her claims. The case was trailing on the day White made his motion and the trial court refused to set the motion for a hearing.

Trial commenced on November 8, 1993. At the time the case was called, White asked the judge presiding, Hon. Raul Rosado, to disqualify himself because White believed Judge Rosado had been biased in a completely unrelated proceeding. Judge Rosado denied the motion.

At trial, Carey testified to the damage she suffered as a

result of the water main break, including ruined carpeting, furniture and clothes, structural damage to her house and continuing odors. White subjected her to a lengthy cross-examination as to the damage attributable to the flood and the circumstances under which State Farm eventually paid her $65,000.

The jury returned a verdict in favor of State Farm in the amount of $43,825.76. White filed a timely notice of appeal.

II
DISCUSSION

Although, because White is acting in pro per, we are inclined to interpret the arguments in his briefs liberally in order that substantial justice between the parties is achieved, a great deal of White's brief is devoted to an incoherent attack on the integrity of the trial court judges and members of this court who have presided over aspects of this case and other trial court judges and a retired United States District Court Judge who, from our perusal of the record, did not participate in any manner in the disposition of this case. As we explain below, we reject these arguments summarily because they are not supported by any facts or evidence in the record on this appeal.

With respect to those arguments which reach the merits or the trial court proceeding, we find no error or abuse of discretion which would support reversal of the judgment.

A. Bias of Judiciary

White asserts that his case was intentionally sent to Judges Gamer and Rosado as a result of a conspiracy to retaliate against him for his efforts to uncover scandals involving the notorious collapse of the United States National Bank; the tax-evasion conviction of a prominent San Diego business

man and an unsuccessful attempt to have him committed to a psychiatric hospital. White also alludes to the recent corruption conviction of three former members of the superior court and Judge Gamer's marriage to one of the convicted judges.

With the exception of his unsuccessful motion to disqualify Judge Rosado, none of the bias issues White asserts on appeal was raised in the trial court. Thus, even if we were inclined to credit any of White's conspiracy accusations, we are not able to act on them on White's appeal from the trial court's judgment. (See *Kendall v. Batzer* (1988) 197 Cal.App.3d 619, 625.) With respect to White's motion to disqualify Judge Rosado, we have no power to review Judge Rosado's order denying the motion. White did not file any written objection to Judge Rosado's participation in the case as required by Code of Civil Procedure section 170.3, subdivision (c), and he did not seek timely review of judge Rosado's determination of the issue in this court by way of a petition for a writ of mandamus. (Code Civ. Proc., 170.3, subd. (d).) White's failure to pursue these remedies prevents us from acting on his claim of bias. (*Guedilia* v. *Superior Court* (1989) Cal.App.3d 1156, 1159; People v Klaess (1982) 129 CalApp.3d 820, 824.)

Notwithstanding our inability to act on White's claim of bias with respect to Judge Rosado, we hasten to add the claim is based on nothing more than White's speculation, innuendo and admittedly faulty memory of events which occurred more than 10 years before trial.[1] These accusations, which are entirely unrelated to State Farm's subrogation claim, are not sufficient grounds for disqualification. (See *In re Marriage of Lemen* (1980) 113 CalApp.3d 769, 788-790.)

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1 White contends Judge Rosado had a relationship with the owner of a massage parlor and as a consequence made a ruling favorable to a vice squad officer who was familiar with the relationship.

B. *Substantial Evidence*

Throughout White's brief there is a suggestion that he judgement is not supported by sufficient evidence of Carey's damages. In making this claim, White face familiar and formidable hurdle. "[U]nder the substantial evidence test, the court views the evidence in a light most favorable to the respondent. In other words, factual matters will be viewed most favorably to the prevailing party. [Citation.] '*Where the evidence is in conflict, the appellate court will not disturb the verdict of the jury or the findings of the trial court.* The presumption being in favor of the judgment . . . the court must consider the evidence in the light *most favorable to the prevailing party,* giving him the benefit of *every reasonable inference,* and *resolving conflicts* in support of the judgment.' [Citation.] An appellate court's ' . . . power begins and ends with a determination as to whether there is *any* substantial' evidence to support [the factual findings]; [it has] no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or *in the reasonable inferences that may be drawn therefrom."* [Citation.]'" *(Orange County Employees Assn. v. County of Orange (1988)* 205 Cal.App.3d 1289, 1293.)

Here, Carey testified extensively as to the damages she suffered and was cross-examined by White as to each item of damage she claimed. In light of Carey's testimony as to the extensive damage her home suffered and the cost of repairs and replacement, the jury-could reasonably conclude that she suffered $43,000 in damages as a result of the flood. Thus, White's arguments notwithstanding, there is more than sufficient evidence to support the judgment.

C. Continuance and Cross-Complaint

We find no abuse of discretion in the trial court's denial of White's motion for leave to file a cross-complaint and its refusal to grant him a second continuance. With respect to the

proposed cross-complaint against the water district, we note that at the time White moved for leave to file it, a trial date had already been set. Given this procedural posture and the potential delay bringing a third party into the proceedings, the trial court acted well within its discretion in denying leave. (See *Crocker Nat. Bank v. Emerald* 221 Cal.App.3d 852, 864.) (1990) 221 Cal.App.3d 852, 864.)

With-respect to White's motion for leave to file a cross-complaint against State Farm, we note that the only operative allegations in the proposed cross-complaint are that State Farm did not have a viable subrogation claim against White and litigated against White in an unfair manner. White's attack on the viability of State Farm's claim is indistinguishable from a claim for malicious prosecution and may not be brought by way of a cross-complaint. *(Babb v. Superior Court* (1971) 3 Cal.3d 841, 846.) Moreover, White's allegations with respect to State Farm's conduct of the litigation are barred by Civil Code section 47, subdivision (b)(2). *(Kupiec v. American Internat. Adjustment Co.* (1991) 235 Cal.App.3d 1326, 1333; *Doctors' Co. v. Superior Cou.* (1990) 225 Cal.App.3d 1284, 1299.)

There is no right to a continuance and whereas here, one continuance has already been granted, there is no abuse of discretion in denying a second request for a continuance made c the eve of trial. (See *Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 171-172.)

D. Limitation on Cross-Examination

White' complains the trial court unfairly limited his cross-examination of plaintiffs witnesses and his argument. As State Farm-notes, every court has the inherent power to regulate the proceedings of matters before it and to effect an orderly disposition of the issues presented. *(Baugess v. Paine*

(1978) Cal.3d 626, 635; Code Civ. Proc., § 128.) In particular, trial court's are required to "exercise reasonable control over the mode of interrogation of a witness so as to make such interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and to protect the witness from undue harassment or embarrassment. n (Evid. Code, § 765.) Our review of the record discloses that the trial court granted White a great deal of leeway in his examination of plaintiff's witnesses and in his argument. In particular, witness trial court let White cross-examine Carey at considerable length and only cut off the examination after approximately an hour and a half. Thus we find no abuse of discretion in the limitations the trial court imposed on White's presentation of his defense.

E . Competence of Counsel

On appeal White also contends that prior-to his substitution, his counsel erred in failing to pursue his cross-complaint. White cites no authority and we are aware of none which would permit him to obtain reversal of a civil judgment based on his counsel's incompetence, when, as here that incompetence did not prevent White from fully contesting his liability.

F. Post-Judgment Proceedings

While this case was pending, White moved for an order permitting him to engage in additional discovery. (Code Civ. Proc., §.2036.) The trial court denied the motion. White also brought a motion in this court and it was denied.

Although it is not clear from the record, apparently White sought additional discovery to pursue his conspiracy theory. Because these claims are based largely on speculation separated by years from the events giving rise to State

Farms's subrogation claim, we find no abuse of discretion in the trial court's order denying additional discovery on these issues. For similar reasons we see no need to revisit this court's disposition or White's motion here.

G. Sanctions

State Farm has asked' for $600 in sanctions under rule 26 (a) of the California Rules of Court. State Farm asserts that White's accusations of judicial misconduct are frivolous and unrelated to the merits of the judgment. While we agree that many of White's arguments are frivolous and indeed incomprehensible, he has raised arguments with respect to the sufficiency of the evidence and the conduct of the trial court proceedings which, while unsuccessful, were not completely without merit. *(In re Marriage of Flaherty (1982)* 31 Cal.3d 637, 649 ["an appeal is not frivolous if 'any of the legal points [are] arguable on their merits']."") Accordingly, the request for sanctions is denied.

Judgment affirmed. Respondent to recover its costs of appeal.

S/BENKE, Acting P.J.

WE CONCUR:

S/NARES, J.
S/McDONALD, J.

Included in the classification of irregularities within the purview of Code Civ Proc, Sec. 657, subd 1, is an overt act of the judge which prevents the complaining party from having a fair and impartial trial, and it is immaterial whether or not the irregularity resulted from bias or prejudice. Develop-Amatic Engineering v. Republic Mortg. Co. (1970) [2 CA3d 143, 91 Cal Rptr 193]

A prosecutor who, while acting within the scope of his duties in initiating and prosecuting a case, willfully deprives the accused of his constitutional rights is subject to criminal punishment under 18 USCS, sec 242, which makes it a crime for a person, acting under color of law, to deprive another of any right protected by the Constitution or laws of the United States, and is subject to professional discipline or disbarment. Imbler v. Pachtman, 424 US 409, 96 S Ct 984, 47 L Ed 2d 128

Supreme Court Rule 10.
Considerations governing Review on Certiorari

(A) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter, has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(B) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

FRE. 804 a4 Heresay Exceptions; Declarant Unavailable

(a) Definition of Unavailability.

"Unavailability as a witness" includes situations in which the declarant -

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.